

1 UNITED STATES BANKRUPTCY COURT
2 NORTHERN DISTRICT OF MISSISSIPPI

3 Case No. 11-13463-dwh

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5 In the Matter of:

6
7 MARITIME COMMUNICATIONS/LAND MOBILE, LLC

8
9 Debtor.

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12
13 United States Bankruptcy Court

14 Thad Cochran U.S. Courthouse

15 703 Hwy 145 North

16 Aberdeen, Mississippi

17
18 November 15, 2012

19 9:35 a.m.

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21
22 B E F O R E :

23 HON. DAVID W. HOUSTON, III

24 U.S. BANKRUPTCY CHIEF JUDGE

1 Motion to Strike Portions of the Objection of Skytel To
2 Confirmation and Motion in Limine filed by Craig M. Geno on
3 behalf of Maritime Communications/Land Mobile, LLC
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5 First Amended Chapter 11 Plan filed by Craig M. Geno on
6 behalf of Maritime Communications/Land Mobile, LLC
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25 Transcribed by: Sherri L. Breach, CERT*D-397

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1 P R O C E E D I N G S

2 THE COURT: All right. Mr. Geno, call your first
3 witness this morning.

4 MR. GENO: Good morning, Your Honor. If it please
5 the Court, Craig Geno for the debtor. I believe, Your
6 Honor, Mr. Solomon has an announcement to make about a
7 settlement that was reached last evening and this morning
8 concerning the timing and ability of certain creditors to
9 object to classes -- claims and classes 1 through 7.

10 THE COURT: All right. Mr. Solomon.

11 MR. SOLOMON: Your Honor, there has been an
12 objection, I believe, by Skytower relating to the objection
13 to claims language in paragraph E of the plan, and that
14 language will be resolved -- revised as follows to resolve
15 that objection, and that's been agreeable to both the debtor
16 and also Choctow and the committee. And that language will
17 be, "After confirmation, the debtor and the liquidating
18 agent shall have the sole right to object to claims through
19 and including 90 days following FCC approval of any FCC
20 spectrum license sales. However, any objection to a class
21 1, 2, 3, 4, 5, and 7 claim must be made no later than 60
22 days following confirmation."

23 THE COURT: Okay. And that is agreeable to
24 everyone? Mr. Ruhl?

25 MR. RUHL: It is agreeable to Skytower, Your

1 Honor. Yes.

2 THE COURT: All right. Mr. Lupinacci?

3 MR. LUPINACCI: (Indiscernible) hear that in
4 there, but the concept is only the non-liquidating agent or
5 the debtor would have that ability to object, and with that
6 that's --

7 MR. SOLOMON: Yes. The first sentence is, "After
8 confirmation, the debtor and liquidating agent shall have
9 the sole right to object to claims" --

10 MR. LUPINACCI: Right.

11 MR. SOLOMON: -- "through and including 90 days
12 following FCC approval," and then the next sentence is,
13 "However, any objection to a Class 1, 2, 3, 4, 5 and 7 claim
14 must be made no later than 60 days following confirmation."

15 MR. LUPINACCI: So we're clear that that's the
16 same language it's the debtor or the liquidating agent.

17 MR. SOLOMON: And we can put that in there.

18 MR. LUPINACCI: Yeah.

19 MR. SOLOMON: That's fine.

20 THE COURT: Okay.

21 MR. LUPINACCI: (Indiscernible), Your Honor.

22 THE COURT: Okay. Very well. Mr. Geno.

23 MR. GENO: It's agreeable with us, Your Honor.

24 THE COURT: Okay. Very well. Thank you, Mr.

25 Solomon.

1 MR. SOLOMON: Thank you, Judge.

2 MR. GENO: I would call Sandra DePriest, Your
3 Honor.

4 THE COURT: All right. Ms. DePriest, come on up
5 and let the clerk administer the oath.

6 (Witness sworn)

7 THE COURT: Have a seat.

8 MR. GENO: May I proceed, Your Honor?

9 THE COURT: All right. Go ahead.

10 MR. GENO: Thank you.

11 DIRECT EXAMINATION

12 BY MR. GENO:

13 Q Ms. DePriest, state your full name for the record,
14 please, ma'am?

15 A Sandra DePriest.

16 Q Where do you live?

17 A Collins (sic), Mississippi.

18 Q What is your relationship, Ms. DePriest, to the debtor,
19 Maritime, in this case?

20 A I am the president and I also am the hundred percent
21 shareholder of Communications Investments, Inc., which is
22 the general partner of SRJW Partnership, which owns 98
23 percent of Maritime.

24 Q Thank you.

25 Ms. DePriest, what was the financial condition of

1 Maritime at and shortly prior to the time that it filed the
2 petition in this case?

3 A We were out of any cash. We had no -- no cash flow or
4 I think we had about \$9,000 in the bank and we had no
5 borrowing power.

6 Q Were you about three months behind on payment of
7 employees' salaries?

8 A Yes, we were.

9 Q Were you also behind on payment of utilities, rent and
10 other overhead costs and expenses?

11 A Yes, we were.

12 Q And were you also behind on payment of tower leases and
13 leases of real estate involving towers?

14 A Yes, we were.

15 Q After the filing of the petition, Ms. DePriest,
16 Maritime has existed from a cash and billing payment
17 standpoint on funds it has borrowed from Southeast
18 Commercial?

19 A That's correct.

20 Q Other than the 40 or \$50,000 that Mr. Reardon
21 testified about yesterday that came in from leases, Maritime
22 has had no other income after the filing, has it?

23 A That's correct.

24 Q And there is no significant income anticipated in the
25 near future, is there?

1 A No, there's not.

2 Q Ms. DePriest, have you and your husband, Don DePriest,
3 infused significant funds into Maritime over the last three
4 or four years?

5 A Even before that, but since -- since 2005, yes. We
6 have infused at least -- you know, over \$7,000 -- excuse me
7 -- over \$7 million.

8 Q And as I understand it, both you and your husband
9 directly or indirectly through a corporate entity that
10 loaned money to Maritime, all of those entities that you and
11 your husband are waiving any claim for distribution under
12 the plan?

13 A Absolutely.

14 Q And under the plan you are giving up your stock
15 interest in Maritime directly and indirectly, and those
16 equity interests will be canceled?

17 A That's correct.

18 Q Are there any promises or understandings that exist,
19 Ms. DePriest, between, you, your husband, Maritime, Choctow
20 or any other entity that the two of you will ever get any
21 money or direct benefit out of the Maritime case in the
22 event the Court sees fit to confirm the plan or otherwise?

23 A No. There is no agreement. I mean, you know, we would
24 not do that.

25 Q Thank you, Ms. DePriest.

1 MR. GENO: Nothing further, Your Honor.

2 THE COURT: All right. Mr. Lupinacci?

3 MR. LUPINACCI: No questions, Your Honor.

4 THE COURT: Mr. Solomon.

5 MR. SOLOMON: No questions.

6 THE COURT: Mr. Spencer?

7 MR. SPENCER: No questions, Your Honor.

8 THE COURT: Mr. McCullough?

9 MR. MCCULLOUGH: No questions, Your Honor.

10 THE COURT: Mr. Drew?

11 MR. DREW: No questions, Your Honor.

12 THE COURT: Mr. Ruhl?

13 MR. RUHL: If it please the Court, Danny Ruhl for
14 Skytower entities.

15 CROSS-EXAMINATION

16 BY MR. RUHL:

17 Q Good morning, Ms. DePriest.

18 A Good morning.

19 Q Good to see you again. I think Mr. Geno asked you if
20 there were any promises or agreements between yourself or
21 Mr. DePriest and anyone else pursuant to which you or he
22 would get any direct benefit and you said no; is that right?

23 A Absolutely not.

24 Q Okay.

25 A (Indiscernible).

1 Q Okay. So you were -- there were no promises or
2 agreements that you --

3 A (Indiscernibles).

4 Q Okay. Fair enough.

5 Do you -- are you familiar with -- I'm sure you
6 are -- the post-petition DIP lending or DIP loan made by
7 Southeastern Commercial Finance to the debtor?

8 A Yes, I am.

9 Q Okay. If I understood his testimony yesterday, Mr.
10 Reardon said that the financing that the debtor ultimately
11 receives from Southeastern Commercial Finance post-petition
12 was not available to the debtor pre-petition. I may have --
13 is that right?

14 A That's correct.

15 Q Okay. Can you tell me why?

16 A Yes. We had no reasonable means of repaying that. The
17 -- we had a hearing designation over -- hanging over us and
18 there was -- we could not even continue to prosecute that or
19 continue to defend that. And so there is no available
20 financing to us anywhere.

21 Q And how did the bankruptcy filing change the
22 availability of financing?

23 A With the petition in Bankruptcy Court, there was
24 provision -- a use of provision for administrative fees to
25 be paid upon the sale, and there's also a more reasonable

1 expectation that through the Second Thursday there can be --
2 creditors can be paid.

3 Q Okay.

4 A Through the sale and the closing. We had -- we had --
5 were locked up in the FCC in terms of closing any
6 transactions. So while there were contracts in existence,
7 there was no cash flow. We couldn't close those
8 transactions.

9 Q Okay.

10 A And until we could close those transactions under the
11 protection of Second Thursday, we would not have any cash
12 flow per the creditors.

13 Q Okay. Thank you.

14 At the time the debtor took on its secured debt,
15 did it notify those lenders who -- who -- who lent the money
16 that resulted in the secured claims of any -- let me back
17 up. At the time the debtor took on its secured debt, did it
18 -- did it notify any of those lenders of the Skytel
19 challenges in connection with the licenses?

20 A Yes. We were working with Jim Ostein through Pinnacle
21 and he was apprised at all times of the status of the
22 proceedings with the FCC.

23 Q Okay. What -- which -- which proceedings are you
24 referring to specifically, all --

25 A All the proceedings.

1 Q -- of the proceedings?

2 A We kept him apprised of all of the objections that were
3 being -- you know, other documents anybody (indiscernible)
4 and did not. But I'm saying, we kept him advised that were
5 tied up in litigation with Mr. Havens and -- you know, and
6 trying to get the option licenses and -- which had been
7 assigned to us freed up for operation, sales, transfers,
8 leases, that sort of thing.

9 Q Okay. And you had those discussions on -- on or --
10 with those secured lenders on or before the time they lent
11 the money to the debtor? You had those sorts of discussions
12 --

13 A Oh, yes.

14 Q Okay.

15 A Well, actually, I think some of the lending took place,
16 especially the initial debt package with -- happened before
17 we filed for the auction. So we had that -- that lending in
18 place for financing near the auction. So that would have
19 all happened in the spring of 2005 before the auction even
20 took place.

21 Q Okay.

22 A So they -- that would not have been the (indiscernible)
23 at that time.

24 Q Which lenders are you referring to?

25 A Pinnacle.

1 Q Pinnacle? Okay.

2 A Yes.

3 Q Any others of the debtors' secured lenders?

4 A No.

5 Q Okay. Are you're familiar with the guarantees that Mr.
6 DePriest provided in connection with some of the secured and
7 unsecured debt in this case, or --

8 A Yes.

9 Q -- secured debt or unsecured claims? Yes?

10 A Yes. Uh-huh.

11 Q Okay. Do you know if any of those holders of those
12 guarantees have in any way sought to collect those or sought
13 repayment under the guarantees?

14 A They have.

15 Q Okay. Can you tell me about that?

16 A Mike Webster has filed an action prior to the -- I
17 think prior to the filing of bankruptcy. And I would have
18 to look at the list before -- if I -- for any others. But,
19 you know, we've been -- there have been discussions. I
20 think Don and I have been in discussions with them about the
21 proceedings so they knew that there -- there was more of an
22 opportunity for them to recover, especially after the filing
23 of the bankruptcy that there was more of an opportunity for
24 them to recover, you know, if we were allowed to pursue the
25 Second Thursday and -- and be paid.

1 Q Okay.

2 A So I think that they -- they realized that it was not
3 going to be beneficial to -- and they certainly have been
4 involved in the proceedings, like Southeast Commercial
5 Finance, some of those parties or the same recipients of
6 guarantees.

7 Q Okay. Anyone besides Mr. Webster that you specifically
8 recall filed an action to seek repayment of --

9 A Not that I can recall right now. I can't.

10 Q Okay. Has -- has your husband performed under any of
11 the guarantees?

12 A He may have. I believe that -- and I don't remember --
13 again, I'm not remembering whether one of them was the old
14 (indiscernible) or -- or -- okay. (Indiscernible).

15 Q Ms. DePriest, the guarantee documents were introduced
16 and admitted into evidence yesterday. They were produced
17 marked highly confidential, so I'm -- I don't want to put
18 this on the screen.

19 MR. RUHL: But --

20 THE WITNESS: Okay.

21 MR. RUHL: -- may I approach the witness, Your
22 Honor? What I have here is a summary of the guarantees and
23 the names of the people --

24 THE COURT: Okay. You can approach the witness.
25 That's fine.

1 BY MR. RUHL:

2 Q And, Ms. DePriest, if you need to see the guarantees to
3 confirm that information, that's fine with me,. but I just
4 wanted you to use that document to refresh your recollection
5 of the parties who obtained the guarantees so you can answer
6 the question of -- that I asked before about if Mr. DePriest
7 had performed under any of the guarantees?

8 A I do believe that Fred Gode (ph) has been paid some
9 measure, but probably not the interest. He's been paid
10 something.

11 Q Anybody else?

12 A And I think that's evident in the amount of his claim.

13 Q Okay.

14 A That his -- his claim is less than the other amount of
15 his -- of the guarantee.

16 Q Okay. Is that it?

17 A So I think that's -- that was the one that was -- that
18 had come to mind.

19 Q Any others as you reviewed the list?

20 A It's some mighty fine print.

21 Q I'm sorry.

22 A I'm trying. But I -- I think that's the only one.

23 Q Okay. Thank you.

24 MR. RUHL: May I approach?

25 BY MR. RUHL:

1 Q The loan to secured creditor in the bankruptcy case is
2 collateral -- at this point is Collateral Plus Fund,
3 correct?

4 A That's correct.

5 Q Okay. They got their debt assigned to them by Pinnacle
6 Bank, isn't that right?

7 A That's correct.

8 Q Okay. When did -- when did that --

9 A A portion of that.

10 Q When did that assignment occur? It was paid -- it was
11 after the bankruptcy case --

12 A It was after the bankruptcy.

13 Q Okay. You said a portion of the -- of the debt was
14 assigned. Which --

15 A I'm saying a portion is what Southeast Commercial
16 Finance holds in the way of debt came from Pinnacle. They
17 also had some of their own claim.

18 Q Okay. And you said Southeastern Commercial. Did --

19 A I --

20 Q -- you mean Collateral Plus?

21 A Collateral Plus, I mean.

22 Q Okay. Do you recall how much they had already, a
23 ballpark figure?

24 A \$7 or \$8 million, maybe.

25 Q Okay.

1 A About.

2 Q But they got the entire Pinnacle Bank claim assigned to
3 them?

4 A Yes, which was an additional 8 million, which would put
5 their debt under their claim at about 15 million.

6 Q Okay. Whatever amounts in the debtors' schedules were
7 admitted as part of the debtors' disclosure statement, you
8 wouldn't -- you wouldn't dispute those amounts, would you?

9 A There will be some -- there may be some objections to
10 some of the -- some of the claims.

11 Q No. I mean, the amount that the debtor listed -- that
12 you listed for the Pinnacle Bank --

13 A Oh, no.

14 Q Okay. Okay. Would the -- were the debtors' secured
15 creditors threatening any adverse action against the debtor
16 in connection with any defaulted loans prior to the
17 bankruptcy case, or let's just narrow it down to the six
18 months or so prior to the bankruptcy case?

19 A There were -- there was some heated discussions, I
20 believe, about, you know, expectations and desire to be paid
21 and need to be paid.

22 Q Okay. Is that it?

23 A I think we knew that we had, you know, not wanted to
24 get any additional funds. And that there was the potential
25 for Pinnacle to carve a loan and I --

1 Q Okay.

2 A -- but I -- they obviously didn't do it before the

3 bankruptcy was filed, but afterwards.

4 Q Okay. And do you recall giving testimony at a 341

5 meeting at -- towards the beginning of this case, the first

6 meeting of creditors where the U.S. Trustee questioned you?

7 A I do.

8 Q Okay. That was sometime around September of 2011?

9 A Probably.

10 Q Okay. Isn't it correct that Donald DePriest was an

11 authorized signer in Maritime?

12 A He was.

13 Q Okay. And had some sort of manager role?

14 A I don't remember him having a title of -- any kind of

15 management title. He had -- he was an authorized signer.

16 Q Okay. This is a portion of the transcript from the 341

17 meeting. It's on page 12, line 7 through 22, and this was

18 part of the questioning that the U.S. Trustee did. Her

19 question was, "Okay. Who manages the debtor? Who is the

20 managing member of the debtor?" Could you tell me what your

21 answer was?

22 A Yes. "John Reardon."

23 Q Can you read --

24 A Oh, okay.

25 Q -- lines 19 through 22.

1 A Oh. What line?

2 Q Lines 19 through 22.

3 A Okay. "The -- on -- sort of the onsite manager is John
4 Reardon in the Virginia office, and then I provide
5 supervision, and then Don DePriest does some things as a
6 manager as well.

7 Q Okay. Thank you.

8 This was -- Ms. DePriest, this is on page 109 of
9 that transcript and these are my questions to you. My
10 question was, "Okay. Now we talked a little bit before
11 about your husband, Donald DePriest, rolling (sic) the
12 company. Did I get it right that you said he is essentially
13 -- has some management contract in place, some management
14 role in one shape or form? Can you tell me his -- you know,
15 describe more, I guess, his management role in the company
16 and what role he takes."

17 Mr. Geno said, "I don't think she said he played a
18 management role," and I asked, "Okay. Well, can you tell
19 me?" And can you tell me what your answer to that question
20 was?

21 A He has a -- he has a contract that --

22 Q Can you -- can you actually tell me what the answer in
23 your deposition was?

24 A He has a management contract in so many -- well, I'm
25 trying to clarify what I was thinking.

1 Q And you'll have the opportunity in a Second, okay?

2 A Okay.

3 Q I asked --

4 MR. GENO: I think the witness has a right to
5 explain her answer even to Mr. Ruhl's question and he's
6 cutting her off as she's trying to explain the answer that
7 was taken a little bit out of context.

8 MR. RUHL: Your Honor, I'll let her do that. I
9 want the deposition testimony read into the record and then
10 I'll let her explain her --

11 THE COURT: All right. You can do that and then
12 you can -- Ms. DePriest, you can explain your answer and
13 I'll certainly give you an opportunity to do that.

14 MR. RUHL: Thank you.

15 BY MR. RUHL:

16 Q Following along after -- on Page 110, line 2, I -- my
17 question was, "He has a management contract. Okay. So what
18 does he do for the company under that management contract or
19 any other management capacity?" Could you read what your
20 answer was on line 6 and 7?

21 A "He was assisting me in raising the financing for the
22 company."

23 Q Okay. "Okay. Has he ever been an authorized signed
24 for the debtor company," and your answer was?

25 A "Yes. He is an authorized signer."

1 Q And I asked, "He's still an authorized signer?"

2 A "Yes."

3 Q Okay. Now -- thank you, Ms. DePriest. I appreciate
4 it. And you can offer any clarifying comments that -- about
5 that sworn testimony that you would like.

6 A Well, after you asked me that question I -- I saw
7 eventually this contract that he had signed and I had --
8 that I wasn't thinking about when we were talking about
9 that. I -- I was thinking more about what he actually did
10 and what he actually did was assist with the financing. He
11 did not do any day to day operations in the company. So
12 that's what I was thinking, more in terms of management
13 where he would make suggestions, but he -- he wasn't really
14 managing in that sense. Actually, that's where I was going
15 when -- when you mentioned that. Yes, I do remember the
16 contract. He has a management contract.

17 Q Okay. Thank you.

18 MR. RUHL: That's all the questions I have, Your
19 Honor.

20 THE COURT: All right. Redirect?

21 MR. GENO: No questions, Your Honor. And that
22 concludes the debtors' presentation.

23 THE COURT: All right. Ms. DePriest, you may step
24 down.

25 THE WITNESS: Thank you.

1 THE COURT: All right. Let's just go around the
2 room and see what other parties might want to offer by way
3 of evidence, if anything, and I'll sort of start with Mr.
4 Solomon. Anything on behalf of the unsecured creditors'
5 committee?

6 MR. SOLOMON: Nothing at this time, Your Honor.

7 THE COURT: All right. Mr. Spencer?

8 MR. SPENCER: Nothing, Your Honor.

9 THE COURT: Mr. McCullough?

10 MR. MCCULLOUGH: No, Your Honor.

11 THE COURT: All right. Mr. Drew?

12 MR. DREW: No, Your Honor.

13 THE COURT: All right.

14 Now we come to Mr. Ruhl, anything you would like
15 to offer by way of evidence?

16 MR. RUHL: Yes, Your Honor. Skytel calls Mr.
17 Warren Havens.

18 THE COURT: Mr. Havens, come up and let the clerk
19 administer the oath.

20 (Witness sworn)

21 THE COURT: Have a seat.

22 All right, Mr. Ruhl.

23 MR. RUHL: Thank you, Your Honor.

24 As a preliminary matter, and for the Court's
25 benefit, these folders contain a lot of things I'm not

1 asking Mr. Havens about, so it won't take, Your Honor, as
2 long as it looks like it might.

3 THE COURT: That's a relief.

4 (Laughter)

5 MR. RUHL: I knew it would be.

6 DIRECT EXAMINATION

7 BY MR. RUHL:

8 Q Mr. Havens, I'm --

9 MR. RUHL: I probably missed it, Your Honor. Did
10 he get sworn in?

11 THE COURT: Yes. He was sworn in.

12 MR. RUHL: Thank you.

13 BY MR. RUHL:

14 Q Can you state your name for the record?

15 A Warren Havens.

16 Q And what's your role in the separate legal entities
17 that have been referred to in this bankruptcy case as the
18 Skytel entities?

19 A I'm the founder and the president.

20 Q Okay. And those entities are for the record Skybridge
21 Spectrum Foundation, Early Systems, LLC, Environmental, LLC,
22 Intelligent Transportation and Monitoring, LLC and
23 Telesource Holdings GB, LLC; is that correct?

24 A Yes.

25 Q Okay. And both yourself individual and the Skytel

1 entities I just read off have filed an objection to the plan
2 in this case; is that right?

3 A Yes.

4 Q Okay. Can you briefly describe for me what the Skytel
5 entities do?

6 A The Skytel entities were first -- the first of them was
7 formed in 1999 and we developed successive entities over the
8 years to obtain FCC licenses and develop business plans for
9 the licenses to provide nationwide wireless for smart
10 transportation, energy systems, and environmental monitoring
11 and protection. And that involves, among other things,
12 understanding the value of the spectrum, the market for the
13 spectrum, the highest and best uses, partnering with other
14 companies to succeed in those forms of wireless I mentioned,
15 and in valuing the spectrum both of our internal purposes,
16 but also as recognized by the market in certain sales and
17 portions of the AMTS spectrum that we negotiated and closed.

18 Q okay. So it's fair to say that the Skytel -- Skytel's
19 business collectively involves at least in part purchasing,
20 using and at time valuing and selling spectrum?

21 A That's correct.

22 Q Including AMTS spectrum?

23 A Yes.

24 Q Okay. Is it fair to say that through your role --
25 through your -- with your background and your role with the

1 Skytel companies that you have a sense of experience with
2 AMTS spectrum and in valuing AMTS spectrum?

3 A Yes. It's been a large -- taken a large portion of my
4 time since year 2000.

5 Q Okay. Can you briefly describe that experience and any
6 relevant background that you have that relates to it?

7 A That relates to?

8 Q Your experience with AMTS spectrum and valuing AMTS
9 spectrums?

10 A Well, I first began individually to apply for site-
11 based AMTS licenses and approximately year 2000 I hired the
12 former chief of the FCC private radio bureau who had been in
13 charge of --

14 THE COURT: Hold on. Let's make sure we're back
15 up and running here with our recording system.

16 (Pause)

17 THE CLERK: Is it up, Lisa?

18 THE COURT: Is everything a go? Okay.

19 Go ahead, Mr. Ruhl.

20 BY MR. RUHL:

21 Q Go ahead, Mr. Havens, if you remember where you left
22 off.

23 A Yes. I was explaining that I individually applied for
24 site-based AMTS licenses beginning in approximately year
25 2000. I hired the former chief of the FCC private radio

1 bureau. His name is Ralph Haller (ph). He had left the FCC
2 and started a consulting business called Foxridge
3 Communications.

4 So I went to the best qualified expert I could
5 find. I hired him and, in turn, he employed his former
6 chief engineer of the FCC. Those two persons were primarily
7 in charge of AMTS radio service prior to their leaving. We
8 developed a plan to apply for site-based licenses throughout
9 the country that were not already licensed to Mr. Reardon's
10 company or other predecessors of Mr. Reardon's company,
11 Mobex (ph) and some other parties. We submitted scores of
12 applications. At each time Mobex and its predecessors would
13 block our applications by what are called strike
14 applications to the FCC. They would take our application,
15 copy it, put their name on it, and file it within a period
16 of time to prevent the FCC from processing our applications.

17 Nevertheless, they were late in some of those
18 strike applications. The FCC, therefore, granted our
19 applications in parts of the country, and then I became a
20 site-based licensee in AMTS.

21 From that point on I studied the AMTS spectrum,
22 potential uses for it, extensively all of the roles and
23 rule-making orders, and we then developed a nationwide plan
24 to obtain additional AMTS licenses by participating in
25 upcoming auctions that the FCC announced for what are called

1 geographic AMTS licenses.

2 We sought the AMTS licenses in lower 200 MHz
3 because it was an ideal radio service in spectrum range for
4 extensive long-range coverage along highways and Maritime
5 areas for intelligent transportation systems. And that
6 would augment the nationwide 900 MHz spectrum that we had
7 bought from the FCC and the auction regarding what is called
8 location and monitoring service licenses. It's a unique
9 radio service the FCC established for intelligent
10 transportation systems. However, that 900 MHz spectrum is
11 too high in range for cost effective long-range coverage of
12 the highway systems outside the urban areas and to underlie
13 the 900 MHz in the urban areas for more redundancy and
14 reliability.

15 So we became very interested in AMTS to complete
16 our nationwide plan for smart transportation energy and
17 environment systems. All of those applications have a high
18 level of similar characteristics in terms of the critical
19 nature of the service and the long-range coverage.

20 And in that -- in that process we -- and I
21 personally undertake all of this work. I have staff that
22 assists me, but I'm very hands on on both the FCC rules and
23 legal aspects, the business planning, the valuation,
24 technical aspects. I hire dozens of leading experts in the
25 country in law and in technology and business planning and

1 market assessment to assist in our plan.

2 So that's the summary of our background with
3 myself individually and AMTS. We eventually -- or rather to
4 complete that, we formed additional policies to bring in
5 additional funds to participate in the two AMTS auctions,
6 FCC auctions of AMTS larger geographic licenses. One was in
7 the year 2004. Mobex had applied for that, but did not put
8 in any money at all for its own reasons. Maritime had not
9 yet been formed.

10 Then in the next AMTS auction in year 2005,
11 Maritime had been formed. It purchased site-based licenses
12 from Mobex. It obtained certain financing. It obtained a
13 bidding credit that since -- has since been shown it did not
14 deserve, and it competed against two of the Skytel companies
15 in Auction 61, the second AMTS auction using the undeserved
16 bidding credit, but, nevertheless, resulting in the FCC
17 grant of the licenses before its violation of the rules to
18 obtain the bidding credit -- or rather the auction ended
19 with its high bids before the FCC had determined it did not
20 deserve that bidding credit.

21 Two of my companies bid against Maritime in that
22 auction. We were the hard bidders of some of the licenses,
23 sold in that auction. Maritime was the hard bidder of
24 others. And those are the geographic licenses at issue or
25 that are in part of Maritime right now. However, my

1 companies who participated in that auction, after the
2 auction filed a petition to deny the application of Maritime
3 to receive the licenses for which it was the high bidder.

4 MR. GENO: Your Honor, I'm going to interpose an
5 objection here at this point. We've let Mr. Havens go on.
6 His answer is not responsive to the question. First of all,
7 and I don't think we're here to sit and listen to him
8 regurgitate seven or eight years of FCC filings and
9 objections. It's not relevant to confirmation.

10 THE COURT: Well, where are you going with this,
11 Mr. Ruhl?

12 MR. RUHL: Your Honor, I'm trying to establish his
13 background and I think that we have listened to a lot of
14 testimony from other witnesses about their background. And
15 I'm guessing Mr. Havens is trying to relate this experience
16 of the Skytel entities to his background and experience and
17 the company's background and experience with AMTS spectrum
18 purchasing, marketing, selling that. So we can cut to the
19 chase and -- and --

20 THE COURT: Well, I mean, I understand all this
21 and I understand all these issues and all about Auction 61
22 and the, perhaps, improper bidding procedures that were
23 employed. I understand all of that. I've heard it for a
24 long time. So let's do cut to the chase.

25 MR. RUHL: Okay.

1 BY MR. RUHL:

2 Q Mr. Havens, could you finish summarizing -- briefly
3 describing your and the Skytel entities experience in the
4 ATMS spectrum industry and purchasing, using, and sometimes
5 selling AMTS spectrum?

6 A Yes. We obtained, as I was explaining, the geographic
7 licenses, some of them. We then developed our plan. In the
8 course of developing our nationwide plan we were approached
9 by certain utility companies, some public railroads, gas and
10 oil companies to acquire some of the spectrum. In some
11 parts of the country we sold a portion of our AMTS spectrum
12 retaining sufficient for our nationwide purpose, and I
13 negotiated those transactions. I did the valuation on a MHz
14 per pop basis. I understand the method. I've employed it
15 for years.

16 Before I started the Skytel companies, I was vice-
17 president and a significant owner in a cellular company and
18 we used the same method of valuing cellular on a dollars per
19 MHz per pop basis. I wrote those business plans, obtained
20 the financing, and in all cases the cellular financing and
21 the AMTS transactions were based upon my using that method
22 to assess the value of what was being sold and closed.

23 Q Okay. So it's fair to say, Mr. Havens, that you have
24 considerable firsthand experience and knowledge of the
25 industry and purchasing, marketing, using and sometimes

1 selling and valuing AMTS spectrum; is that right?

2 A That's right. And the companies I manage, we -- we're
3 the only companies that have sold and closed AMTS spectrums.

4 Q Okay. Thank you.

5 I'm going to put on the screen before you an order
6 that was entered November 9th, 2010, or released November
7 9th, 2012 by the FCC, 12M-50. Do you recognize that order?

8 A Yes, I do.

9 Q Okay. And it was issued -- was this order issued by
10 the administrative law judge who was hearing the show cause
11 proceeding?

12 A Yes.

13 Q Okay. In fact, on page 2 of the order the
14 administrative law judge said, "Maritime and the enforcement
15 bureau" --

16 THE COURT: Can you pull it down a little bit,
17 please?

18 BY MR. RUHL:

19 Q "Maritime" --

20 MR. RUHL: I'm starting right here, Your Honor, in
21 paragraph C.

22 BY MR. RUHL:

23 Q "Maritime and the enforcement bureau are instructed
24 that Mr. Havens has considerable firsthand experience and
25 knowledge of the industry that he brings to this

1 proceeding." Is that correct, Mr. Havens?

2 A Yes.

3 Q Okay.

4 MR. RUHL: Your Honor, I would like to offer this
5 order into evidence.

6 THE COURT: Any objection?

7 MR. GENO: None, Your Honor.

8 THE COURT: It will be received as Skytel Exhibit
9 -- what number did we get to yesterday? Let me get over
10 here just to verify. Skytel 4. Pardon? This will be 5?
11 Well, I only had 1, 2 and 3. What was 4?

12 THE CLERK: An order to show cause.

13 UNIDENTIFIED SPEAKER: (Indiscernible), Your
14 Honor.

15 THE COURT: Okay. All right. This will be 5,
16 then. It will be received in evidence as Skytel Exhibit 5.

17 MR. RUHL: Thank you, Your Honor.

18 (Skytel Exhibit Number 5 was received)

19 BY MR. RUHL:

20 Q Mr. Havens, is it -- is it correct that the Skytel
21 entities and yourself are creditors and parties -- or
22 creditors in this bankruptcy case?

23 A Yes.

24 Q Okay. I'm going to put on the screen before you an
25 order entered by this Court on October 2nd, 2012 as docket

1 number 685. It's an agreed order setting the amount at
2 which Skytel's claims should be temporarily allowed for
3 certain limited purposes. Are you familiar with that order,
4 Mr. Havens?

5 A Yes, I am.

6 Q Okay. Does it provide in part -- and I'm summarizing
7 here. The order speaks for itself. But it provides in part
8 that the Court's temporarily allowed Skytel's claim for the
9 purposes of confirmation and objection to confirmation; is
10 that right?

11 A Yes.

12 Q Okay.

13 MR. RUHL: Your Honor, I would like to offer this
14 into evidence as --

15 THE COURT: Any objections?

16 MR. GENO: None, Your Honor.

17 THE COURT: It will be received as Skytel Exhibit
18 6.

19 (Skytel Exhibit Number 6 was received)

20 BY MR. RUHL:

21 Q Mr. Havens, you've been present the entire time this
22 confirmation hearing has been going forward, have you not?
23 You've been present in the courtroom for this hearing --

24 A Yes, I have.

25 Q -- the whole time?

1 A Yes.

2 Q Okay. And you've heard the testimony provided by the
3 other parties?

4 A Yes.

5 Q Okay. Mr. Havens, based on your considerable firsthand
6 experience that we've just discussed with AMTS spectrum and
7 all the facets thereof we've discussed, based on your
8 experience will the debtor face significant and material
9 hurdles in attempting to obtain Second Thursday relief as
10 they intend to do under their plan?

11 MR. GENO: Your Honor, I object to that. He is
12 not a lawyer. He's not qualified as a lawyer, and I think
13 that calls for a legal conclusion considering all the
14 evidence we heard yesterday from the real experts.

15 MR. RUHL: Your Honor, we heard evidence from Mr.
16 Reardon on the second Thursday issue and he wasn't qualified
17 to give as an expert or otherwise in that area.

18 THE COURT: Well, I (indiscernible). I'll let him
19 testify to this, give his opinion, but I recognize that he
20 is not as qualified as the general counsel -- former general
21 counsel for the FCC to give an opinion such as this. So
22 I'll give the testimony such weight as I think it deserves.

23 MR. RUHL: Fair enough, Your Honor.

24 THE COURT: Go ahead.

25 MR. RUHL: Thank you.

1 BY MR. RUHL:

2 Q Mr. Havens, do you recall the question?

3 A Yes, I do.

4 Q Okay. Can you tell us what your thoughts are on that
5 question?

6 A I believe Maritime will face significant uncertainties,
7 hurdles and the likelihood of a denial of Second Thursday
8 relief for a number of reasons. One is that --

9 Q Mr. Havens, I don't mean to interrupt you, but just --
10 so we're all clear I would like one reason at a time. When
11 you're done with the first, I'll ask you for the second.

12 A The first reason I would bring up is that the FCC
13 including by the chief administrative law judge, and the FCC
14 prosecutors are in the enforcement bureau and in the hearing
15 regarding Maritime, the HDO or order to show cause hearing,
16 have made clear that Second Thursday, first of all, involves
17 the weighing -- weighing by the FCC of the severity of the
18 wrongdoing, and its regulatory interests to enforce its
19 rules, and deal with the wrongdoing and impose appropriate
20 sanctions, including license revocation.

21 And that Maritime -- the extent of the wrongdoing
22 described in the HDO is extensive. It has gone on since
23 Auction 61, not only within the auction, but in years
24 thereafter and failing by Maritime to honestly represent and
25 disclose their affiliates and gross revenues, their control,

1 their officers, their managers. And the HDO concluded that
2 the FCC is still not satisfied that full and proper
3 disclosures have been made.

4 But I disagree with the experts that Maritime used
5 yesterday in that the HDO is not the sum total of the
6 wrongdoing. There's an ongoing hearing and the hearing
7 involves what was explained yesterday as issue G. That
8 involved site-based licenses of Maritime. Those are not
9 subject to Second Thursday. That's why the hearing is
10 proceeding on the issue G site-based licenses.

11 Q When you say it's proceeding, Mr. Havens, you mean
12 discovery has gone forward?

13 A Yes. Discovery and related motions are going forward
14 toward a trial or a hearing.

15 Q As opposed to the other issues in the hearing
16 designation order?

17 A Yes. The other issues deal with the geographic
18 licenses and whether or not they should be revoked. The
19 issue -- and whether or not some of the Maritime site-based
20 license spectrum should be assigned to the purchasers under
21 the APAs. Those purchase agreements are reflected in FCC
22 assignment applications that are listed in the caption of
23 the HDO below the far number application of the -- of
24 Maritime's Auction 61 long form used to obtain the licenses.

25 So yesterday was -- there was testimony by Mr.

1 Keller about the -- there was a stay in the hearing as to
2 the geographic licenses. He later corrected himself that
3 that is not a formal stay yet. I believe that's correct.

4 Q But issue G with the site-based licenses is proceeding?

5 A Issue G is proceeding precisely because that involves
6 automatic termination of site-based licenses based upon
7 alleged failures of Maritime to timely construct and keep in
8 operation those site-based licenses. And under FCC rules
9 applicable here, including Section 1.955, if a licensee has
10 not timely constructed or if it has timely constructed, but
11 it failed to keep in permanent operation the license
12 involved, then the license automatically terminates.

13 Q Is that without -- with or without further FCC action?

14 A Well, there's a phrase used in the rule, automatic
15 termination without specific commission action. It takes
16 place at that time of failure.

17 Q Okay. So the FCC obtain -- if the FCC grants Second
18 Thursday relief, are you saying that it does not affect
19 issue G and the site-based licenses?

20 A It would not affect at all.

21 Q Okay. Go ahead.

22 A Next point?

23 Q Yes. Any other --

24 A Okay. Next point --

25 Q Any other significant material hurdles based on your

1 experience in the debtor obtaining Second Thursday relief?

2 A Yes. In relation to the point I just made, not only
3 has Skytel challenged the site-based licenses on that basis
4 of automatic termination that is currently taking place in
5 the HDO hearing, order to show cause hearing, we have a --
6 several other formal proceedings before the Wireless Bureau,
7 charging the Maritime site-based licenses on the same --
8 same and similar basis. The Wireless Bureau is proceeding
9 with those independent of the order to show cause hearing
10 before the administrative law judge.

11 But in addition, contrary to what Mr. Reardon
12 suggested in -- and Mr. Dino (ph) suggested in the repeated
13 phrase, the Havens' attack, first of all, my companies are
14 not Havens. They are independent LLCs that I happen to
15 manage and partly own. But the -- all of the actions are to
16 protect our legitimate FCC license and rights that we have.

17 And in -- in relation to these challenges we have
18 of the Maritime site-based licenses that automatically
19 terminated under FCC Rule 80.385(c), which states that if a
20 site-based license is terminated or becomes invalid, then
21 the spectrum involved automatically reverts to the same
22 channel or co-channel geographic license that surrounds the
23 site-based license. And the Skytel companies have the
24 geographic licenses in many parts of the country in which
25 Maritime has some of these site-based licenses that, upon

1 evidence we presented -- and that is reflected in the HDO
2 hearing in part, but further in our proceedings before the
3 Wireless Bureau. -- we are pursuing those matters because we
4 have, under that rule, the rights to that spectrum.

5 Q Okay. Let me ask you a question. In relation -- and
6 how that relates to this -- to this plan that's before this
7 Court, are you saying that the challenge that Skytel has
8 going in front of the Wireless Bureau cannot be affected by
9 any application of Second Thursday relief based on your
10 experience?

11 A It cannot be affected for the same reason the
12 administrative law judge and the enforcement bureau have
13 proceeded with that issue and the -- and the order to show
14 cause.

15 Q Okay. What -- what -- you're obviously familiar with
16 the New Jersey litigation?

17 A But if I might --

18 Q Go ahead.

19 A -- add to that answer. So if my -- the reasons why
20 Second Thursday does not apply to those site-based licenses
21 is two reasons. One is the automatic termination I
22 mentioned, which is the reason the administrative law judge
23 is proceeding with issue G. But, in addition, as I
24 testified, under Rule 80.385(c) Skytel license -- Skytel's
25 geographic licenses have rights to the Maritime site-based

1 licenses if they are found to be terminated.

2 So we have a direct claim and that's stated in our
3 formal petitions that are pending before the Wireless Bureau
4 to that spectrum. And when a party has direct claims to
5 spectrum, it is not resolved by Second Thursday. Second
6 Thursday is a balancing of FCC regulatory interest and --
7 and giving up enforcement of those and revoking licenses if
8 it finds the weight of those is not too great to proceed to
9 allow the license to be sold or some licenses to be sold for
10 the innocent creditor. But Second Thursday has never been
11 extended to extinguish the rights of parties with direct
12 claims to the licenses involved.

13 Q Okay. Mr. Havens, you -- you're obviously familiar
14 with the New Jersey court action that yourself and some of
15 the Skytel entities brought; is that right?

16 A That's correct. But if I could, please?

17 Q Let me ask you this question and then you can -- then
18 I'll ask you another one. Are you familiar with the New
19 Jersey litigation?

20 A Yes.

21 Q Okay. And tell me what relationship that litigation
22 has to Second Thursday. I guess I could ask a better
23 question. Does Second Thursday -- would -- would the debtor
24 obtaining Second Thursday as contemplated in this plan of
25 reorganization have an effect on at least one of the claims

1 in the New Jersey litigation regarding Section 313?

2 A The claims we have in the U.S. District Court in New
3 Jersey are under Sherman Act 1, antitrust law. The Court
4 has completely independent jurisdiction from the FCC to
5 determine that Sherman Act 1 case, and the Court has
6 authority under Communications Act 313 to revoke the
7 licenses of any licensee found to have violated U.S.
8 antitrust law. And that is a remedy we're seeking in that
9 case.

10 If we prevail on a finding that Maritime violated
11 the Sherman Act, then we will ask the Court or the Court on
12 its own motion may use its powers under 313 of the
13 Communications Act for which it does not -- it's not a
14 referral to the FCC. It's not a recommendation. It has
15 fully independent authority to revoke the licenses. And
16 that is not a matter that can be laundered or fixed by
17 Second Thursday.

18 Q Okay. And this Court has, in fact, lifted the stay to
19 allow that New Jersey action to proceed; is that right?

20 A That's correct.

21 Q Okay. And the order on the screen, is that the order
22 when the court lifted the stay?

23 A Yes.

24 Q Okay.

25 MR. RUHL: Your Honor, I would like to offer this

1 as the next Skytel exhibit.

2 THE COURT: Any objections?

3 MR. GENO: None, Your Honor.

4 THE COURT: It will be received as Skytel Exhibit
5 7.

6 THE WITNESS: In addition, with regard to that
7 Sherman Act 1 case --

8 BY MR. RUHL:

9 Q Go ahead.

10 A The discovery phases proceeding, the trial has not yet
11 taken place. A determination has not been made yet as to
12 whether Maritime violated antitrust law, Sherman Act 1, and
13 if so, what are the damages. However, if we prevail on our
14 damage claim substantially, the damages -- even without
15 tripling of the damages, which is permitted under the
16 statute relating to Sherman Act 1, and not with regard to
17 attorney's fees, which is also permitted, could be greatly
18 in excess of all of the debt in -- in the Maritime case, and
19 that is not reflected in the plan.

20 And I don't see how -- since the -- since the New
21 Jersey case litigation is proceeding, it is not clear yet
22 when the case will be completed and decided. That doesn't
23 appear to be factored into the plan. I know --

24 Q Okay.

25 A -- Mr. Trammell (ph) testified yesterday, which I

1 appreciate, that he intends to be fair to everyone if the
2 Choctow plan is approved and proceeded with, including
3 Skytel. But the fact is that he has never talked to Skytel,
4 does not understand our Sherman Act claim as far as I can
5 tell.

6 MR. GENO: Your Honor, I --

7 THE COURT: Sustained.

8 MR. GENO: -- think the witness.

9 THE COURT: Mr. Havens, you can't comment on what
10 Mr. Trammell might or might not understand. I think that's
11 beyond your competency to testify to that.

12 Go ahead.

13 BY MR. RUHL:

14 Q Mr. Havens, based on your experience is there any other
15 material hurdles in your view to the debtor obtaining the
16 Second Thursday relief that they intend to attempt to obtain
17 under the plan?

18 A Yes. One additional hurdle. Similar to the automatic
19 termination of the site-based stations, Skytel has pending
20 before the FCC an application for review. It is before the
21 full commission. That is an appeal of a previous denial by
22 the Wireless Bureau of the petition for reconsideration
23 which was a appeal of the denial of our petition to deny the
24 auction closing application or long form of Maritime. In
25 that application for review and the -- and the preceding

1 challenges on back to the petition to deny Maritime's long-
2 form and Auction 61, we are claiming two things: One is
3 that the licenses of Maritime are -- are void ab initio;
4 that they were issued in error because it has already been
5 determined that Maritime violated Section 1.2105 of the
6 commission rules which required certification of the actual
7 control in Maritime and accurate statement -- and
8 certification and accurate statement that its gross
9 revenues, including affiliates to obtain a bidding credit.

10 The FCC has found in the past where that -- where
11 a auction applicant and participant has violated Section
12 1.2105 by misstating the control and misstating its gross
13 revenues to obtain an undeserved bidding credit, that it is
14 disqualified. So our argument -- and pending now before the
15 full commission is that the Maritime licenses are void ab
16 initio. That can't be solved by Second Thursday. You can't
17 revive from the dead licenses that are void ab initio.

18 Q Okay. Mr. Havens, let me ask you this question --

19 A But I -- I do want to finish that testimony.

20 Q Okay. As with the site-based licenses, we're not
21 simply challenging Maritime for the support or whatever they
22 might like to think or try to convince others of. I think
23 they know perfectly well what our case is and what our
24 motives are. They're not personal. They are proper
25 business purposes in the public interest as meant by the

1 communications act.

2 But we -- we have claims to the geographic
3 licenses that I earlier in summary mentioned; that two of
4 our companies placed lawful high bids and we presented to
5 the FCC the evidence of that. We've already paid for those
6 licenses. We submitted the money. The FCC has it. We
7 submitted the Circuit Court case law involved in that.

8 So the point here is that, again, as with the
9 site-based, there's two reasons we say Second Thursday
10 cannot work and has never been extended. It would be a new
11 policy. Don't call it Second Thursday. Call it the
12 Maritime policy they're attempting. They want to use what
13 they call Second Thursday to revive from the dead, under our
14 argument, the license -- geographic licenses that are void
15 ab initio and to extinguish our private party rights to that
16 spectrum. So they would be extending Second Thursday beyond
17 what it -- what has ever been applied for. It has nothing
18 to do with the benefits of innocent creditors. We are
19 talking -- anyway, I can address that later if you would
20 like to ask --

21 Q Well, tell me about that. Do you think that there's a
22 problem with the debtor obtaining Second Thursday underneath
23 this plan based on one of the requirements being -- being
24 for the benefit of innocent creditors?

25 A I think there's very major problems, and I'll summarize

1 those.

2 Number one, much of the debt is guaranteed by
3 Donald DePriest. Donald DePriest is mentioned in the HDO as
4 one of the persons that have engaged in activity that the
5 FCC finds to be in violation of its rules or what might be
6 called a wrongdoer. I have nothing against Mr. DePriest or
7 Ms. DePriest. I'm stating what the FCC has mentioned in the
8 HDO.

9 Getting -- under the plan in this hearing, the
10 licenses would be released from the Jefferson radio policy,
11 which is currently keeping them from being assigned and
12 sold. Choctaw would have the licenses, would sell -- close
13 the APA, sell other licenses and the personal guarantees of
14 Mr. DePriest would be relieved, approximately \$10 million.
15 That is not a minor benefit to a wrongdoer. It's a major
16 benefit. Therefore, I don't believe the FCC would agree to
17 that. I believe the FCC would consider that debt that is
18 backed by the personal guarantee of Mr. DePriest to be not
19 eligible as innocent creditor debt.

20 Second, the majority of the other rest of the debt
21 of Maritime involves creditors who took as their security,
22 clearly the primary security to be -- or collateral to be
23 FCC licenses and proceeds from the FCC licenses.

24 Now at the time of that debt, any lender -- any
25 lender that was doing the most fundamental due diligence

1 would look at the collateral. The FCC has a system --

2 MR. GENO: Your Honor, I'm going to object to Mr.
3 Havens --

4 THE COURT: Yeah. We're getting so far afield
5 here. The objection is sustained. Let's reign this in.
6 We're getting way out there beyond this witness's qualified
7 expertise on what other creditors might have done or not
8 done in creating liens.

9 MR. RUHL: With that testimony, Your Honor, I
10 understand the Court's ruling.

11 BY MR. RUHL:

12 Q Mr. Havens, based on your experience does -- well, let
13 me ask you this. Has the FCC Enforcement Bureau or the
14 administrative law judge conducting the show cause hearing
15 expressed any concerns about the application of Second
16 Thursday and in a situation where the value of the spectrum
17 that's supposed to be transferred to Choctaw might
18 significantly exceed the value of the debt against the
19 estate?

20 MR. GENO: Objection, Your Honor. It's calling
21 for hearsay.

22 THE COURT: Sustained. Unless you've got an order
23 to that effect I am not interested in what somebody might
24 have even opined from the bench. If you got an order,
25 that's another thing.

1 MR. GENO: I've -- I've got the transcript, Your
2 Honor.

3 THE COURT: Well, let's -- show it to counsel,
4 then, and we'll see what -- what we have here.

5 (Pause)

6 MR. RUHL: Your Honor, this transcript was
7 attached, for the record, as Exhibit B -- the excerpts as
8 Exhibit B to the Skytel objection to the plan. So I believe
9 they've seen it before.

10 (Pause)

11 MR. RUHL: And I'll -- I can narrow it down for
12 you. The part I'm going to ask about is on page 572 to 573
13 of the excerpts. It's page 5 and 6 of the exhibit.

14 THE COURT: You can perhaps -- I'm not sure what
15 this even is. But you can offer -- you might be able to
16 offer this as an exhibit, but to allow Mr. Havens to give
17 his comments and editorialize about what might be in a
18 transcript that is or is not going to be permitted.

19 MR. RUHL: Okay. Well, this is a transcript of
20 proceedings before the FCC in the show cause hearing from
21 June 4th, 2012, and once they have a chance to review it,
22 I'm going to offer it as Skytel --

23 THE COURT: Okay.

24 MR. RUHL: -- the next Skytel exhibit.

25 (Pause)

1 MR. BENSINGER: Your Honor, we're going to
2 continue our object. First, it is -- it remains hearsay.

3 Secondly, it's my understanding from doing just a
4 very quick review of this transcript, there's never been any
5 conclusion by this body or opinion offered by this body as
6 to the viability of any type of Second Thursday application.

7 MR. RUHL: It's -- it's not hearsay. It's a
8 transcript of a proceeding before an administrative law
9 judge, Your Honor, and it speaks for itself. And I can put
10 up on the screen what I'm specifically referring to.

11 THE COURT: I -- I would be glad to take a look at
12 it and see what we're talking about. I mean, I -- I have no
13 idea.

14 MR. RUHL: Your Honor, I've put on the screen what
15 is docket number 805-1. It is Exhibit B to the objection
16 Skytel filed to confirmation. It's a transcript of
17 proceedings before the FCC that I received June 4th. It's
18 from 2012. The date of the hearing was May 22nd, 2012 in
19 Washington, D.C. And it was by the Honorable Richard L.
20 Sippel (ph), chief administrative law judge, who's
21 conducting the show cause hearing. Appearances by Mr.
22 Keller, Mr. Reardon, Mr. Havens, the lawyer on behalf of
23 Pinnacle Wireless, among others, and I have a copy that's
24 not highlighted, but this is one portion that I was
25 specifically referring to. It's discussed in other

1 transcripts for the FCC. It's discussed more in this
2 excerpt. It's Judge Sippel discussing the plan of
3 reorganization, the initial one that was filed. I'll move
4 it down.

5 Ms. Cain (ph) is -- I think was testified to
6 yesterday as counsel for the FCC Enforcement Bureau, and she
7 said, "As we explain" -- among other things, "As we
8 explained -- as was explained by Mr. Keller, the plan
9 contemplates assigning the entire portfolio of Maritime's
10 licenses, which are still currently valued at 42.2 million"
11 -- she was referring to the scheduled value, which is in the
12 record now -- "to a group of secured creditors that are only
13 owed 17 million," and she expressed as -- that "As we have
14 discussed numerous times in prehearing conferences there is
15 a concern that there is no precedent for applying Second
16 Thursday when you're assigning greater value to the
17 creditors than what they -- they are owed."

18 Again, Your Honor, this is a transcript of an
19 official proceeding before the administrative law judge and
20 I don't know why it's not --

21 THE COURT: Objection sustained, Counsel. That's
22 just argument by -- by a lawyer who may be in a government
23 capacity. Objection is sustained. It's not coming into
24 this record.

25 MR. RUHL: Okay.

1 (Pause)

2 MR. RUHL: Bear with me for just one moment, Your
3 Honor.

4 THE COURT: All right.

5 BY MR. RUHL:

6 Q Mr. Havens, based on your experience that we discussed
7 earlier and among other things, value in ASTM spectrum, what
8 is, in your view, the value of the licenses that the debtor
9 holds?

10 MR. GENO: Your Honor, if this is being offered
11 for expert testimony we object. If this is lay opinion, we
12 have no objection.

13 MR. RUHL: Well, I'm going to lay the foundation,
14 Your Honor. It's based simply on a review of the asset --
15 certain of the asset purchase agreements that the debtor
16 entered into and that have been approved by this Court that
17 I have, that many of which, I think maybe all of which have
18 been entered already. It's based on the Skytel contracts
19 that -- that Mr. Havens' personally negotiated and all --
20 looking at the value in those contracts, the megahertz
21 involved and the population involved which is taken directly
22 from the U.S. Census Bureau.

23 And -- and there's a summary that's included under
24 the Summary Rule for Federal Rules of Evidence as the first
25 page of Exhibit A of our objection and it sets forth based

1 on those things, not an expert appraisal, but the
2 population, the megahertz, and the values -- the weighted
3 average values in the Skytel contracts and the debtor APAs
4 that this Court has approved what the value of this license
5 -- of these licenses are.

6 MR. GENO: First of all, Your Honor, I don't know
7 how he's going to get all that statistical information into
8 evidence. That's the first objection.

9 Second objection is we're again comparing apples
10 to oranges. Mr. Havens' spectrum does not have Mr. Havens'
11 attacking it like ours does. His is fairly free and clear
12 of any attacks from a (indiscernible) the FCC for that
13 matter. So you're comparing apples to oranges, and his --
14 his view of that is just simply irrelevant.

15 MR. RUHL: Well, first, Your Honor, we haven't
16 even seen what I'm talking about yet.

17 Second, as I mentioned, it's also the weighted
18 average of the approved APAs that the debtor entered into,
19 and there are multiple hearsay exceptions that apply to this
20 U.S. Census Bureau statistical data that was relied on for
21 this. Mr. -- among others, Federal Rule of Evidence 803.8
22 applying to reports -- applying to records, reports,
23 statements or data compilations in any form by public
24 offices or agencies such as the U.S. Census Bureau. And
25 this data is also on the FCC's website.

1 It's also under the hearsay exception Rule 803.17
2 for market and commercial reports. And, again, Your Honor,
3 it's based on a simple review of documents that have been
4 admitted into evidence in this court, some in this hearing,
5 some in prior hearings, and looking at the population, the
6 megahertz and --

7 THE COURT: Is he -- is he prepared to impeach the
8 testimony of your own expert witness, Mr. Walters, who has
9 testified?

10 MR. RUHL: Your Honor, the Skytel contract
11 information was actually used in the weighted average taken
12 from the Walters' report. Mr. Havens has now verified it by
13 looking at the contracts, the population figures, the
14 megahertz and the weighted average, so it's not going to
15 involve any impeachment at all of our prior expert.

16 THE COURT: Mr. Bensinger.

17 MR. BENSINGER: Your Honor, Choctow would like to
18 raise an objection based on the relevancy of this testimony
19 where there's been clear testimony yesterday from Mr. Fayer
20 (ph), the -- Choctow's expert that there are only three
21 requirements for obtaining Second Thursday: A bankruptcy,
22 no material benefit to the alleged wrongdoers, and no
23 (indiscernible). Valuation is not an issue with regard to
24 Second Thursday.

25 MR. RUHL: Well, Your Honor, we have an expert we

1 intend to call that's going to say it is. Mr. Havens is --
2 is -- has been acknowledged by the FCC administrative law
3 judge and others. It's clear he has extensive experience.
4 And Second Thursday hasn't been applied in a windfall
5 situation and we have an expert that's going to say that is
6 an issue. I guess I could call Mr. Havens back up after
7 he's done if we need to.

8 But what -- what the other parties and the plan
9 proponents' experts have said about it shouldn't be
10 controlling on whether Mr. Havens can -- can talk about this
11 summary, which was compiled by information that is all
12 admissible in this proceeding.

13 THE COURT: Insofar as the valuation of the
14 spectrum licenses that are in the asset purchases agreement
15 that have been before this Court before, we've had expert
16 testimony from both the Skytel entities as well as witnesses
17 supporting the debtors' position. Mr. Reardon testified
18 yesterday about the same sorts of concepts.

19 MR. RUHL: Right, Your Honor. He was allowed to
20 testify to value yesterday.

21 THE COURT: And he was -- he was also qualified as
22 an expert witness in that and as -- as he was tendered to
23 the Court.

24 MR. RUHL: Yes, sir.

25 THE COURT: Now I know Mr. Havens has a world of

1 experience in this through his personal -- personal work in
2 this area. Insofar as his valuations are concerned, if you
3 want to break it down on each contract and if it's somehow
4 at wide variance with Mr. Walters, then he is going to be
5 impeaching his own witness that he's offered before. But if
6 it's similar to what Mr. Walters has testified --

7 MR. RUHL: Yes, Your Honor.

8 THE COURT: -- which I've heard, which I've also
9 rejected as to -- in fact, there were only two asset
10 purchase agreements that I recall that Mr. Walters was at
11 very real serious variance with the debtors' experts.

12 MR. RUHL: That's right, Your Honor. But this --
13 this is -- the asset purchases agreements involve a small
14 portion of the debtors' licenses. This summary, again, is
15 valuating all of the debtors' licenses similar to what Mr.
16 Reardon testified to yesterday. And I have the -- the Court
17 mentioned that the Walters' admitted expert report, it was
18 admitted in a prior hearing. This information -- the
19 weighted average information is taken from that.

20 You know, two things I guess: One, I can offer
21 the Walters' amended report into evidence which shows that
22 there's no -- there's no impeachment there; and, two, I
23 agree that Mr. Havens has extensive experience and maybe
24 I'll tender him as an expert witness in value of the AMTS
25 spectrum if -- if that would be helpful.

1 THE COURT: Well, let's go ahead and do that.
2 Let's take that hurdle first. He's been offered as an
3 expert witness in valuation of AMTS spectrum. Is there an
4 objection to him testifying as an expert witness?

5 MR. GENO: Yes, Your Honor. He has not testified
6 about negotiations, standards or anything else, and it
7 sounds like he is going to rely on Mr. Walters -- I mean,
8 Mr. Walters' report to support that. I don't think that's
9 justified under the circumstances, Mr. Reardon testified
10 about all of the contracts he's negotiated and everything
11 else he's done in this case and before and continuing in
12 this case. We have none of that from Mr. Havens.

13 MR. RUHL: Two things on that, Your Honor.

14 First, as I thought I mentioned, he's not just
15 relying on what Mr. Walters did. He independently verified
16 this information on the weighted -- that's set forth in the
17 summary that I can't put on the screen because it's
18 confidential, but I can hand the Court a copy. He
19 independently verified -- it's been filed under seal --
20 verified the weighted average information in -- for both the
21 Skytel contracts and their approved APAs that were approved
22 at the second hearing because that's what Walters deal with,
23 take -- took the information from the APAs and the
24 contracts, population figures from the census bureau. He's
25 independently verified all of that stuff, one.

1 Two, he was discussing, and I think he did
2 discuss, pretty extensive experience with negotiating
3 contracts, valuing spectrum before he got cut short on that
4 before we were going to offer him as an expert in value.
5 But I think his experience is vast and this Court has
6 recognized that he's -- that he's an industry expert. So I
7 don't have any question in my mind he should be qualified as
8 an expert in value.

9 THE COURT: All right. Mr. Bensinger.

10 MR. BENSINGER: Your Honor, I believe that Mr.
11 Havens' testimony with regard to this issue was that he has
12 a vast experience in hiring experts on value. He has never
13 said that he's actually gone out and -- and attempted to
14 value spectrum himself.

15 THE COURT: All right.

16 MR. BENSINGER: So we don't believe that -- that
17 there's been a sufficient foundation to qualify Mr. Havens
18 as an expert (indiscernible).

19 MR. RUHL: I think his testimony was -- went far
20 beyond that, Your Honor, and it's based on experience much
21 like Mr. Reardon was qualified based on experience. And --
22 and he can go into it further if we need to.

23 THE COURT: Let's -- let's go into it -- if you
24 want to try to establish a foundation for him to testify as
25 an expert as to AMTS spectrum valuations, let's go ahead and

1 go through all his qualifications and let's make the record
2 on that and we'll see where it goes.

3 MR. RUHL: Yes, sir.

4 THE COURT: And then here again, I've -- I've
5 heard the testimony yesterday from two experts that the
6 valuation really is immaterial to the Second Thursday
7 application. So --

8 MR. RUHL: Well, Your Honor, I can call him back
9 again, if that's an issue, after our expert testifies
10 otherwise.

11 THE COURT: All right. Well, go -- you -- you go
12 ahead and try to qualify -- let's go ahead and do it now.

13 MR. RUHL: Yes, sir. And I just want to make a
14 note for the record. I think that if Your Honor will look
15 at this from what I was saying earlier, this really doesn't
16 even involve expert valuation in spectrum. It's just --
17 it's just looking at contracts and census data. But be that
18 as it may, so even -- our position is even if he's not
19 qualified as an expert in value, he can testify to the
20 summary of all the documents of which have been provided and
21 many of which have been introduced into evidence in this and
22 prior proceedings.

23 THE COURT: Have you got the summary there?

24 MR. RUHL: I do, Your Honor. May I approach?

25 THE COURT: Pass that. Let me just at least take

1 a look at it.

2 (Pause)

3 THE COURT: All right. Go ahead. I'll let you
4 proceed on to see where this might lead us. I have an idea
5 what this is all about now. Go ahead.

6 MR. RUHL: Yes, sir. And -- and, Your Honor, if I
7 could first note to you and for the record that the reason
8 we're concerned about this, the objectors have -- have
9 mentioned that, you know, their experts have said the value
10 is immaterial to Second Thursday and so we don't need that
11 kind of testimony here. Windfall issues aren't material.

12 Our concern is that when -- if this plan gets
13 confirmed and it goes up to the FCC, the argument will be
14 made that this Court determined the value of the spectrum or
15 it was determined at this hearing. And, look, there is no --
16 -- so even if Second Thursday is applicable, it doesn't apply
17 to windfalls. The Bankruptcy Court has said there is no
18 windfall here and the value is 40 million and here's the
19 debt. So -- so that's our concern here, Your Honor.

20 So I wanted to explain that just so the Court --

21 THE COURT: Is somebody asking this Court to make
22 a determination about the value of the spectrum in this
23 hearing on confirmation?

24 MR. GENO: We are not, Your Honor.

25 THE COURT: Choctow?

1 MR. BENSINGER: We're willing to stipulate to the
2 testimony we heard yesterday that value is approximately 45
3 million.

4 MR. RUHL: That -- that means that they are, in
5 fact, stipulating that this hearing has decided the value is
6 45 million.

7 THE COURT: I think -- I think Mr. Reardon's
8 testimony, it -- in whose eyes are you looking at at this
9 and under what circumstances, and when you have the
10 situation as it exists today where there's no movement
11 whatsoever to Maritime, the value right at this moment
12 perhaps is zero like he said it was.

13 MR. RUHL: Right. And --

14 THE COURT: But then if the circumstances change.
15 So you're looking at a moving target here. I --

16 MR. RUHL: Yes, sir. And that's our concern is
17 that this -- this Court's confirmation order will be taken
18 to the FCC and they'll say, look, the Bankruptcy Court said
19 that with the licenses cleared of all challenges, they're
20 only worth \$40 million. If they'll stipulate that that's no
21 going to be a problem and the order will say that, then we --
22 - hen that will certainly shorten --

23 THE COURT: I don't think anybody that I've heard
24 today is trying to ask this Court to place a value on the
25 spectrum.

1 Now I've heard -- and, of course, in as far as the
2 confirmation of this plan is concerned, whether it ought to
3 be confirmed or not, it's whether or not there is some
4 possibility that this Second Thursday treatment can be
5 afforded to this particular debtor. It's not a guarantee.
6 I know that. And I understand the circumstances that were
7 testified to yesterday that this could potentially -- you
8 know, you get denied the first time. Maybe you come back a
9 second time. You tweak the proposals. You still got
10 Footnote 7 possibilities for entities like Southern
11 California Railway Authority and things like that. That's
12 all -- I mean, I'm not trying to put a value and I don't
13 think I've been asked to value the debtors' spectrum because
14 it's a moving target.

15 MR. RUHL: Your Honor, if -- if the confirmation
16 order can say that it's not any -- any res judicata or any
17 other preclusive effect on the value of the debtors'
18 spectrum at any point in time, then we can, I'm sure it
19 please the Court, move past this issue.

20 THE COURT: I've -- I've already said this. I
21 mean, I -- I don't think anybody that I'm hearing from plan
22 proponents' perspective is asking this Court to value the
23 spectrum.

24 MR. GENO: We are not, Your Honor. But to the
25 extent there are any 1129(b) issues or --

1 THE COURT: There are none.

2 MR. RUHL: There are none. We stipulate there are
3 none.

4 THE COURT: This is 1129(a).

5 MR. GENO: If 1129(a) best interest is not
6 applicable, we really don't even care whether the Court
7 provides that under the plan the creditors are getting more
8 than they would in a Chapter 7. But that's the only
9 valuation issue that's there.

10 THE COURT: Okay.

11 MR. RUHL: If -- if that testimony has -- if the
12 confirmation order can say that testimony has no preclusive
13 effect or doesn't establish the value of the licenses for
14 purposes of the FCC, then I think that's okay. But
15 otherwise I --

16 THE COURT: I've said three times already right
17 here I'm not --

18 MR. RUHL: Yes, sir.

19 THE COURT: -- valuing the licenses.

20 MR. RUHL: Thank you, Your Honor.

21 THE COURT: Okay. Let's move on to something
22 else.

23 MR. RUHL: Okay.

24 (Pause)

25 BY MR. RUHL:

1 Q Mr. Havens, you've heard it mentioned -- you've heard
2 the term "Footnote 7 relief" mentioned in this proceeding so
3 far, have you not?

4 A Yes.

5 Q Okay. Can you tell me based on your experience, does
6 -- does Second Thursday relief need to be obtained for a
7 party to obtain Footnote 7 relief from the FCC?

8 A They are different concepts.

9 Q Okay. Explain that.

10 A Footnote 7 was a footnote in the Hane (ph) designation
11 order, FCC 11-64 that commented that Southern California
12 Railroad -- Regional Railroad Authority could, if it -- if
13 it chose to, apply to the FCC, submit a showing as to why it
14 had special needs for closing the APA to acquire some -- a
15 spectrum from Maritime to satisfy positive train control
16 system; that it was mandated to put in by Congress.

17 It was an exception to the HDO in that it might --
18 the Commission was convinced by that showing for that one
19 application to be exempt from the revocation hearing.

20 Q Okay, Mr. Havens. Other than what we've discussed and
21 based on your experience, do you see any other hurdles to
22 this debtor achieving Second Thursday relief under the plan?

23 A Well, if I could briefly -- I mean, you asked me about
24 that footnote. I'm not entirely sure of the question you
25 were raising. But it's -- it's not the same as Second

1 Thursday type of relief, but it was only specific -- it was
2 specifically only for that one case and that was an
3 exceptional case where the railroad is under a mandate from
4 Congress to put in positive train control. There are
5 several proceedings on -- in the FCC specific to radio
6 spectrum from positive train control that have been going
7 on. Docket 11-79, Skytel's involved in that with an expert
8 and another docket on that particular Southern California
9 Regional Rail Authority application, and there's extensive
10 documentation in there by the railroad, by Skytel and other
11 parties that are probably why the commission has not acted
12 upon that showing by Southern California Railroad.

13 But that footnote has nothing to do with the other
14 APAs. If it did, the hearing designation order would be
15 basically moot.

16 Q Is there anything stopping Southern California from
17 proceeding with Footnote 7 relief without this Court
18 confirming a plan and the debtor and Choctaw getting Second
19 Thursday relief?

20 MR. SPENCER: I'm going to object. I don't know
21 that he has personal knowledge of what Southern California
22 Railway is doing.

23 MR. RUHL: That's -- I didn't ask him --

24 THE COURT: Sustained.

25 Go ahead. I mean, that has no bearing on -- on

1 this right now. I mean, I understand it's out there and,
2 you know --

3 MR. RUHL: Well, Your Honor, we're trying to
4 respond to testimony that happened yesterday that -- that
5 without this plan being confirmed, those positive train
6 control issues and the public safety concerns that are
7 discussed --

8 THE COURT: But you asked a question, does he know
9 anything why Southern California Railway Authority is not
10 attempting to move forward and that -- that's --

11 MR. RUHL: I didn't -- if that's how I asked it,
12 Your Honor, I didn't intend to. I'll -- I will -- can I try
13 to restate it?

14 THE COURT: What is -- what is impairing them from
15 going forward is what the question was.

16 MR. RUHL: Okay.

17 THE COURT: Go ahead. If you want to restate it,
18 that's fine.

19 MR. RUHL: I'll try to restate it.

20 BY MR. RUHL:

21 Q Mr. Havens, Footnote 7 relief that's being sought by
22 among -- by Southern California Regional Rail Authority as
23 noted in the hearing designation order is completely
24 independent and separate of Second Thursday, isn't that
25 right?

1 A Yes, it is.

2 Q Okay. And you've --

3 THE COURT: And that's consistent with what we
4 heard yesterday.

5 MR. RUHL: Okay.

6 THE COURT: Okay.

7 MR. RUHL: May I have a moment to confer?

8 THE COURT: All right.

9 (Pause)

10 BY MR. RUHL:

11 Q Mr. Havens, based on your experience other than what
12 you've already discussed, would the debtor and/or Choctow
13 face any other hurdles in attempting to obtain Second
14 Thursday relief?

15 A Is there any other particular --

16 Q I think that's all I have. No -- no other particular
17 questions.

18 A Then I -- I could give more details, but that doesn't
19 appear to be --

20 Q Okay.

21 A -- what the Court is looking for.

22 MR. RUHL: That's all the questions I have, Your
23 Honor.

24 THE COURT: Mr. Geno, cross-examination.

25 Mr. Ruhl, let me pass this back to you.

1 (Pause)

2 BY MR. GENO:

3 Q Good morning, Mr. Havens. I'm Craig Geno. I represent
4 Maritime.

5 A Good morning.

6 Q On the screen before you is what's been marked as
7 Skytel Exhibit 6, and on page 4 of the first decrial
8 paragraph there is a dollar amount stated there for the
9 allowance of the Skytel claim for (indiscernible) purposes.
10 What is that amount?

11 A \$100,000.

12 Q Thank you.

13 Mr. Havens, of the AMTS spectrum that exists, what
14 percentage of that spectrum do you and/or any entities you
15 own and control own?

16 A I don't have that calculation.

17 Q Of the AMTS spectrum that exists that neither you nor
18 any companies you own or control own, how much is owned by
19 Maritime?

20 A I don't have that particular calculation.

21 Q Of the AMTS spectrum that exists, how many other
22 persons or entities other than you, entities you own and
23 control or Maritime hold title of that spectrum?

24 A Title to whose spectrum?

25 Q I'm sorry.

1 A You mean have some AMTS licenses? Is that what your
2 question is?

3 Q Yes, sir. Other than you, entities you own or control
4 or Maritime.

5 A Well, there are a number of utilities, gas and oil
6 companies that have purchased some spectrum from my
7 companies and they own that at this time. If you like I
8 could list them. Should I do that?

9 Q Yes, sir.

10 A Northeast Utilities Service Company, Vermont Trans Co.,
11 A Vista Corporation, Puget Sound Energy, Chesapeake Oil and
12 Gas. Those are purchasers of spectrum -- AMTS spectrum from
13 my companies.

14 Q So would you say that those are end users of spectrum;
15 that they probably don't intend to resell the spectrum.
16 They intend to use it?

17 A I believe that's true.

18 Q All right. Are there any other entities out there
19 other than Maritime, you or entities you own or control that
20 hold spectrum that are not end users of it and that may have
21 it for sale?

22 A Everyone who acquires an FCC license under FCC policy
23 must acquire a license for use. You can't acquire it to
24 resell it. That's warehousing. It is not permitted. So I
25 don't go around asking the other licensees to tell me

1 whether or not they're complying with FCC law or not and
2 only holding spectrum with the intention to sell it off. I
3 could only speculate on -- on that.

4 In terms of your earlier question, what
5 percentage, I assume you mean -- I could calculate that if
6 you would like me to. I'm not quite sure what you're
7 getting at there. But I didn't come here with that precise
8 figure.

9 Q It's all right. If you don't know, you don't know.

10 A I could determine it, but it's -- it's math and the
11 data is all in FCC records. It's easy to determine.

12 Q Let me ask it this way. Do -- other than the people
13 you referred to as end users, exclude them, do you and/or
14 entities you own or control own the majority of AMTS
15 spectrum?

16 A I would have to add it up. It could be in the
17 majority. It's --

18 Q All right.

19 A -- a substantial portion, possibly a majority. I don't
20 think we've ever attempted to do that. It wouldn't take
21 long.

22 Q And it is your position, Mr. Havens, or Skytel's
23 position that the AMTS spectrum that Maritime owns and holds
24 title to really belongs to you or the Skytel entities?

25 A I stated quite clearly, and you could read the FCC

1 pleadings. They're a matter of public record. I'm sure you
2 and your -- Mr. Keller have read those by now. We have
3 particular claims under FCC rules, Communication Act
4 sections and Circuit Court case law as to why two Skytel
5 entities are the lawful high bidders of the spectrum awarded
6 to Maritime, what is held in its geographic licenses and why
7 those two Skytel companies and other Skytel entities are the
8 lawful holders of a Maritime site-based spectrum if the FCC
9 determines that that spectrum is terminated.

10 We fully realize it's up to the FCC to make those
11 determinations. But what I've stated is we have formal
12 claims to owning that spectrum that have yet to be
13 adjudicated.

14 Q Thank you.

15 And those formal claims of ownership, do they go
16 to all of the AMTS spectrum that Maritime currently has
17 title to or only a part of it?

18 A Well, let me break that down, just to be more precise.
19 Maritime currently holds site-based licenses in what is
20 called a Mississippi license area, Mississippi geographic
21 license area for B block AMTS. My company holds the
22 geographic B block license. That's one area. That's shown
23 on the map, the FCC what that territory of the U.S. is.

24 In the northeast, my companies have the A block --
25 much of the A block geographic license. We sold some to

1 Northeast Utilities and Vermont Trans Co. and Maritime has
2 site-based stations for the A block that underlie our
3 geographic license for North Atlantic.

4 In the mid-Atlantic, Maritime has some B block
5 AMTS site-based licenses that underlie one of my Skytel
6 company's geographic B block license.

7 In -- let me think. I believe on -- oh, in the
8 northwest geographic license area, Maritime has some A block
9 AMTS licenses that underlie one of my company's A block
10 geographic license.

11 Did I -- did I answer your question? I'm --

12 Q No, sir. Do you remember the question?

13 A Could you please repeat it?

14 Q Sure.

15 Is it Skytel's position that it owns all of the
16 Maritime spectrum or only a part of it?

17 A That we own all of it?

18 Q Yes.

19 A Well, I stated we're not stating we own it. It's up to
20 the FCC to determine that. I've stated we have claims that
21 --

22 Q That is my question. Is it your position that you own
23 all or a part -- you being Skytel -- own all or a part of
24 Maritime's current AMTS spectrum?

25 A Okay. That -- part of the answer I gave you; that with

1 regard to those areas identified we -- we have a claim to.
2 If you would allow me to repeat my testimony and not change
3 it. I didn't state we're claiming to own it now. I stated
4 we have a claim to that pending before the FCC and the FCC
5 is the authority. It must make the determination.

6 If it rules against us, we may or may not appeal
7 to the Circuit Court. I --

8 Q Mr. Havens, I'm not asking you to predict what the FCC
9 is or is going to do. Nobody knows. What I am asking you,
10 is it your position or does Skytel claim to own all or a
11 part of the Maritime AMTS spectrum that exists?

12 A Okay. And part of my answer I gave. In those areas
13 identified where we hold the geographic licenses I noted,
14 and Maritime has the underlying site-based licenses, we have
15 a claim to those site-based licenses.

16 Q A claim -- a claim of ownership?

17 A Excuse me.

18 Q A claim of ownership?

19 A Yes.

20 Q All right.

21 A Yes. That's part of my answer. And with regard to the
22 geographic licenses held by Maritime, my companies have a
23 claim to ownership to all of them as the lawful high bidders
24 in Auction 61.

25 Q Thank you.

1 Currently before the FCC, Mr. Havens, are the
2 Skytel entities objecting to Southern California's --
3 Southern California Railway's treatment under Footnote 7.

4 A Yes.

5 Q Who currently represents the Skytel entities -- what
6 lawyer or firm represents the Skytel entities before the
7 FCC?

8 A No one.

9 Q No one?

10 A At this time no one. We're getting new counsel.

11 Q How many prior lawyers have you had before the FCC that
12 have quit?

13 MR. RUHL: Objection. That's completely
14 irrelevant.

15 THE COURT: Sustained.

16 MR. GENO: Nothing further, Your Honor.

17 Thank you, Mr. Havens.

18 THE COURT: All right. Mr. Lupinacci, cross-
19 examination or Mr. Bensinger?

20 CROSS-EXAMINATION

21 BY MR. BENSINGER:

22 Q Good morning, Mr. Havens. Bill Bensinger for the
23 Choctaw entities.

24 Mr. Havens, have you or your companies ever had
25 any site-based licenses that have been revoked by the FCC

1 for failure to construct?

2 MR. RUHL: Objection, Your Honor. That's -- I
3 don't know how that could be possibly relevant to this
4 proceeding either.

5 MR. BENSINGER: Your Honor, he offered the witness
6 as an expert in FCC operations and law. I think it goes to
7 the weight of his testimony if he's had issues in
8 maintaining his own FCC licenses.

9 MR. RUHL: I don't think we offered him as an
10 expert witness in anything (indiscernible).

11 THE COURT: Well, let me say this. You know, I --
12 you may not believe it, but I actually do listen and it came
13 out yesterday that some of the licenses had indeed been
14 terminated because of lack of construction. So I've heard
15 it once.

16 MR. BENSINGER: No further questions, then, Your
17 Honor.

18 THE COURT: All right.

19 MR. BENSINGER: I withdraw the question.

20 THE COURT: Mr. Solomon.

21 MR. SOLOMON: No questions, Your Honor.

22 THE COURT: Mr. Spencer?

23 MR. SPENCER: Nothing, Your Honor.

24 THE COURT: Mr. McCullough?

25 MR. MCCULLOUGH: No questions, Your Honor.

1 THE COURT: And Mr. Drew?

2 MR. DREW: No questions, Your Honor.

3 THE COURT: All right. There was a slight bit of
4 cross-examination. Should there be redirect?

5 MR. RUHL: I don't have -- yes, Your Honor.

6 (Laughter)

7 THE WITNESS: I came all the way here. I don't
8 want to go home too quick.

9 REDIRECT EXAMINATION

10 BY MR. RUHL:

11 Q Mr. Havens, Mr. Geno asked you several different
12 iterations of a question I think about whether Skytel claims
13 ownership of some or all of Maritime's licenses and -- and
14 is that -- do you recall that question?

15 A Yes.

16 Q Okay. I don't know that you answered the part where he
17 asked -- I don't think your answer clarified whether Skytel
18 has a claim to ownership of all of the Maritime licenses or
19 just part. Can you clarify that?

20 A All of the geographic and I'm -- I'm trying to think
21 whether or not any Maritime site-based -- yeah. There are
22 some Maritime site-based licenses in the Great Lakes area
23 that we don't have a claim to -- pending claim to ownership.

24 Q Okay.

25 A Like -- I'm just trying to be precise here. North

1 Atlantic I addressed. Mid-Atlantic I addressed. South
2 Atlantic I failed to address. That's -- that's another one
3 where Skytel has A block and B block geographic AMTS
4 licenses, and under our A block licenses in Southern
5 Atlantic area, Maritime has some site-based stations, which
6 we claim have automatically terminated by action of law, and
7 if they do, then that spectrum reverts to us. So I forgot
8 to state that.

9 I believe that covers -- covers the matter. So
10 all of the geographic and all of the site-based, but for, if
11 I'm correct here, some stations that Maritime alleges to
12 have -- I believe it hasn't turned them back in yet -- in
13 the geographic area.

14 Maritime also had many stations on the A block in
15 the Mississippi region that it stipulated with enforcement
16 bureau will be canceled, terminated. But that spectrum did
17 not underlie a Skytel license. It's the B block Maritime
18 site-based stations along the Mississippi River area and
19 Ohio River area that underlie our B block geographic license
20 which we claim a right to.

21 Q Okay. And I don't want to make you have to remember
22 everything today. Skytel's claims are a matter of public
23 record, are they not?

24 A They're all in formal FCC petitions before the bureau
25 and some are now pending before the full commission.

1 Q Okay. Thank you.

2 THE COURT: You may stand down.

3 MR. RUHL: No more questions.

4 THE COURT: Call your next witness.

5 MR. RUHL: Your Honor, Skytel would call James
6 Chen to the stand.

7 THE COURT: Mr. Chen, come up and let the clerk
8 administer the oath.

9 (Witness sworn)

10 THE COURT: Have a seat.

11 All right.

12 DIRECT EXAMINATION

13 BY MR. RUHL:

14 Q Good morning, Mr. Chen. Could you please state your
15 name for the record?

16 A James Ming Chen.

17 Q And your employment, what -- what do you do?

18 A I am a Professor of Law at the University of
19 Louisville, (Indiscernible) School of Law. Until June of
20 this year I served as dean of that school.

21 Q Okay. So you've been in that employment how many
22 years?

23 A Excuse me.

24 Q How many years have you been the dean of Louisville Law
25 School?

1 A Oh, I had been dean five-and-a-half years.

2 Q Okay.

3 A Yes.

4 MR. RUHL: May I approach the witness, Your Honor?

5 THE COURT: All right.

6 MR. RUHL: May I approach the bench?

7 THE COURT: All right.

8 MR. GENO: Your Honor, why don't we put this on
9 the screen so we can all see it?

10 MR. RUHL: Your Honor, I will, but it's about 50
11 pages long and I'm not going through all of it. But -- and
12 I -- and I have a copy --

13 MR. LUPINACCI: Well, can we have copies of it,
14 then? I mean, I would like to see what he's talking about.

15 THE COURT: This is a vitae.

16 MR. RUHL: Sir?

17 THE COURT: I said it's a vitae.

18 UNIDENTIFIED SPEAKER: It's a curriculum vitae.

19 MR. RUHL: Oh, I'm sorry. That's what it is.

20 BY MR. RUHL:

21 Q Mr. Chen, on the screen can you identify the document I
22 put up there?

23 A Yes. This is my curriculum vitae. It's the
24 (indiscernible) academic term for a resume.

25 Q Okay. Thank you.

1 And what about that document?

2 A This is a summary of the most relevant portions of my
3 resume for the benefit of the Court.

4 Q Was the resume and the summary prepared by you?

5 A Yes.

6 Q Okay. Will you describe your education, please, for
7 the Court?

8 A Yes. I -- starting with college I am a graduate of
9 Emory University. I received a BA and an MA from that
10 institution in 1987. I represented the United States as a
11 full bright scholar at the University of Iceland in 1987 and
12 1988. I attended the Harvard Law School, graduated in 1991
13 magna cum laude and as executive editor -- and executive
14 editor of the Harvard Law Review. That is my education.

15 Q And can you go into your experience after law school?

16 A Yes. I clerked for Circuit Judge J. Michael Ludig (ph)
17 of the Fourth Circuit. I then clerked for Justice Clarence
18 Thomas of the Supreme Court of the United States. After
19 completing my clerkship at the Supreme Court of the United
20 States, I accepted a faculty appointment at the University
21 of Minnesota. Along the way I have taught on a visiting
22 appointment at universities in France, Germany, and
23 Slovakia. In 2007 I joined the faculty of the University of
24 Louisville as dean of the law school. I have throughout
25 retained a tenure position as a professor of law.

1 Currently, I am on leave.

2 Q Could you describe your achievements while you were at
3 the University of Minnesota?

4 A Yes. I did a number of things that are quite typical
5 of law professors. I wrote as many articles as I could. In
6 my own defense, even well after it was enough to get me
7 tenure, promotion to full professor and an endowed share,
8 and I have written extensively on -- on (indiscernible)
9 statutory law, in particular the law of regulated
10 (indiscernible) including federal communications law.

11 Q And can you briefly describe for the Court your
12 achievements as the dean at the University of Louisville?

13 A Yes. At -- at Louisville, my biggest achievements have
14 been in the fields of establishing very practice-oriented
15 experiential approaches to legal education, which many of us
16 may recall was not the standard feature of American legal
17 education, certainly not when and where I went to law school
18 in the late 1980s and the early 1990s at Harvard.

19 That vision proved quite appealing to donors in
20 Louisville and (indiscernible) Kentucky insofar as I was
21 able to double the fundraising at that institution during
22 what was otherwise a very difficult economic time.

23 Throughout my -- and I would say among other
24 things I was very heavily involved in university efforts to
25 commercialize technology and to look at the relationship of

1 complex regulatory systems to high tech industries.

2 Q Okay. What classes have you taught relating
3 specifically to telecommunications or -- or regulatory
4 matters?

5 A I have historically taught a course called, Regulated
6 Industries. I have also taught Administrative Law, and more
7 tangentially I have taught a course called, Legislation or
8 Statutory Interpretation that always requires comparison of
9 complex regulatory statutes.

10 Q Okay. Have you given many lectures and presentations?

11 A Yes, I have. I at this point can't remember the number
12 of countries, but I do remember the number of languages and
13 continents. So I have lectured in English, French and
14 German. I have spoken on -- throughout North America and
15 Europe, Central America and Africa. I have not quite made
16 it to Asia yet, not as a lecturer.

17 Q What about lectures and presentations specifically
18 geared towards telecommunications or regulatory matters?

19 A This is a very long recitation, but I will say that
20 ever since I moved to the University of Louisville, I have
21 participated every year in the annual Kentucky
22 telecommunications policy conference in Lexington, and I
23 have engaged in quite a lot of proceedings as a private
24 consultant and as an expert witness with specific
25 application to communications law.

1 Q Okay. Is one of those on your -- on your resume on
2 page 24? Did you give a lecture or a presentation on
3 building 4g-LTE mobile wireless networks?

4 A Yes. I gave a presentation on the legal aspects of
5 what it would take to compete legitimately in the 4g long-
6 term evolution market for mobile wireless
7 telecommunications.

8 Q Okay. And did you give a lecture or presentation on
9 national broadband plan, the Comcast decision and the Google
10 Verizon proposal?

11 A Yes. That was the previous year at the Cable and
12 Telecommunications conference in Lexington.

13 Q I'm trying to pick out from all your presentations and
14 lectures which ones are applicable. What about -- I think
15 on page 27 of your resume, you gave a lecture or
16 presentation dealing with the National Broadband plan, the
17 --

18 A Well, that was the -- that was the year before the year
19 before. The substantive year in 2011. I thought you were
20 referring to my presentation on the T-Mobile merger. But
21 before I had talked about the Comcast decision, the legal
22 Verizon proposal and at that time was the National Broadband
23 plan.

24 Q Okay. I think I screwed that up. Sorry, Mr. Chen. I
25 didn't mean to throw you off.

1 Did you give presentations or lectures on the
2 Communications Act at any point?

3 A Well, you know, this is the -- I do confess to having a
4 view of gray theories about regulation in that what you're
5 talking about is (indiscernible). And that was a very
6 extended series of lectures culminating in an article in
7 the Ohio State Law Journal where I took on long-standing
8 debate about (indiscernible) network elements and the total
9 element (indiscernible) and incremental cost-pricing rule,
10 adopted in response to the 1996 Telecommunications Act.

11 Q Okay. Were you ever the moderator at a -- at a
12 presentation on communications acts for the Law and Society
13 Association?

14 A Oh, yes. It was kind of funny. Law and Society,
15 you're asked to be as creative as you can be, and I spoke
16 about communications acts in the sense of the federal
17 statute, of course, and about the (indiscernible) under the
18 First Amendment.

19 Q Have you given presentations on the authority to
20 regulate broadband internet access over cable?

21 A Yes. Shortly after the passage of the
22 Telecommunications Act of 1996, this was one of the issues
23 hotly contested and I took the view which has since been
24 resolved, of course, that the FCC did, in fact, have
25 authority to regulate broadband internet access as an

1 information service, if not necessarily as a traditional
2 classical telecommunications service.

3 Q Let me move to -- for a minute to a document that we've
4 circulated to the parties that I think this -- is this the
5 document prepared by you?

6 A Yes, sir. I prepared this document in anticipation of
7 my appearance during this proceeding.

8 Q Okay. Does it summarize -- does it attempt to
9 summarize the parts of your resume that are more relevant to
10 telecommunications?

11 A Yes. I did not mention any of those presentations
12 because I wanted to focus -- I wanted to not belabor the
13 point and just focus on the things I had formally written
14 and gotten published in a law review or shared on the social
15 science research network, which is law and economics and
16 businesses (indiscernible) public library of science and
17 biology (indiscernible), that's arxiv.org in physics and
18 other physical sciences.

19 So I just wanted the -- for the benefit of the
20 Court and anyone else who would be listening to me today, to
21 know that I had been a very active scholar specifically in
22 the field of federal communications law as well as a large
23 number of closely related fields.

24 Q Tell me about some of the -- about some of the articles
25 that you have --

1 A Well, let me just go through as quickly as I can to
2 each of these. Telecommunications Mergers, I think that's
3 about as straightforward a title as I've ever given.

4 (Indiscernibles) -- excuse me -- Red Lists. I wanted to
5 talk about the (indiscernible) broadcast medium and how
6 relatively modest the dead hand of broadcast law is on
7 contemporary telecommunications law.

8 I spoke -- if you'll flip the page, on this
9 document the next page I've written about telecommunications
10 mergers, this one mostly involving wireless carriers. The
11 death of regulatory compact I believe I've mentioned before
12 involving my grand theory of price regulation and
13 expectations in particular of historic prices on -- historic
14 as opposed to replacement cost (indiscernible).

15 Then (indiscernible) years, it's not directly
16 related to telecommunications law, except I listed it there
17 only because it's one of the most frequently cited cases by
18 the federal courts. (Indiscernible) regulation of speech is
19 my attempt to understand and articulate for a legal audience
20 the First Amendment as applied to large communications
21 media, in particular those regulated under the
22 Communications Act of 1934.

23 The nature of public utility, infrastructure
24 (indiscernible) in the law is an attempt to understand
25 public utility law, including the communications act in

1 light of the Nobel prize winning work of the economist,
2 Ronald Coas (ph). Subsidized (indiscernible) being in the
3 public interest summarizes a good deal of work that I
4 personally did in Section 214(e) eligible telecommunications
5 carrier designation proceedings and a large number of state
6 public utility commissions around the country as well as
7 papers filed on behalf of the World Cellular Association
8 before the Federal Communications Commission.

9 (Indiscernible) -- excuse me -- of cooperative
10 competition policy talked about the application of antitrust
11 law in the United States and in the European Union,
12 including to industries such as telecommunications. The
13 reason I list this article about inflation is because a good
14 part of my article about inflation talks about the use of
15 macro-economic indicators including inflation and the gross
16 domestic (indiscernible) in lieu of traditional mergers of
17 utility costs in (indiscernible). I think we've mentioned a
18 couple of the others and it's beginning to get
19 (indiscernible) for me.

20 Q Okay. Is it fair to say that these -- this -- this --
21 these articles we are reviewing by and large relate to
22 telecommunications and regulatory matters?

23 A Yes. I should go ahead and mention Number 18, legal
24 process and political economy of telecommunications reform
25 in the (Indiscernible) Law Review that was cited by the

1 Supreme Court in the Nixon Public Utilities' case coming out
2 of Missouri about eight years ago.

3 Q Okay. How -- how is your -- I want to ask you how your
4 scholarship has impacted the courts and regulatory agencies?

5 A I did my best to identify some prominent citations to
6 my work. There it is. The Missouri (indiscernible) lead
7 case. I just cited that. That's a perfect segway. I have
8 gotten a conduit-based regulation speech to be cited by the
9 Tenth Circuit. The Tenth Circuit was kind enough to
10 recognize subsidized rule (indiscernible). The Third
11 Circuit cited (indiscernible). Magnificent Seven, my first
12 piece on telecommunications mergers at that time mostly
13 involving the traditional (indiscernible) carriers such as
14 the pre-Bell Atlantic -- or excuse me -- the predecessor of
15 Verizon known as Bell Atlantic was a central part of that.
16 And as you see a District Court has also cited
17 (indiscernible) telecommunications reform.

18 And I'll anticipate this and say that I've also
19 been cited in federal and state regulatory tribunals.

20 Q Are the federal and state regulatory tribunals you're
21 referring to the (indiscernible) --

22 A Yes. The -- well, the FCC cited my work on wireless
23 mergers. The California Public Utilities Commission cited
24 my work on wireless mergers. And that (indiscernible) case
25 just got some attention from the Arkansas Attorney General

1 as well.

2 Q Okay. Have you ever testified in any regulatory
3 proceeding as an expert?

4 A Yes. This is a summary of those. I did testify and it
5 is part of the material that I believe was submitted to this
6 Court by the Skytel entities. I did testify in the New
7 Jersey antitrust case, Haydens v. Molex. I have provided
8 extensive assistance which is publicly known because of my
9 article called, A merger to (indiscernible) on AT&T, T-
10 Mobile. I actually assisted a (indiscernible) Mississippi
11 regional wireless carrier (indiscernible).

12 And there was probably the biggest achievement of
13 my professional life which is participating in a team that
14 actually secured a successful competitor suit under Section
15 7 of the Clayton Act against a merger. If you know
16 antitrust law you'll know that it's practically impossible
17 to assert a successful competitor suit in the absence of an
18 allegation of (indiscernible) pricing. We were able to
19 accomplish that by focusing on the cost of inputs, in
20 particular in contemporary 4g-LTE deployment.

21 Q Okay. Anything else you can (indiscernible)?

22 A Yes. I would like to mention, too, that I was part of
23 the Administrative Conference of the United States, which is
24 a public sector/private sector cooperative project. It's a
25 formal agency of the federal government. It had

1 (indiscernible) for a few years because of lack of money.
2 But (indiscernible) it's alumni, at least two justices of
3 the Supreme Court of the United States, Anthony Scalia (ph)
4 and Steven Brier (ph), and I have been a public member of
5 the ACUS since its reconstitution. I've attended every
6 preliminary session and looking forward to next preliminary
7 session in about a month where I will be presenting a
8 specific recommendation involving the treatment of inflation
9 on -- in the United States (indiscernible). There's a
10 number of statutes that's the subject that I went off and
11 addressed, beginning with my interest in its application in
12 communications law and in (indiscernible).

13 Q Okay. Have you testified before any state public
14 utility commissions as an expert related to
15 telecommunications?

16 A Yes. As you see here, I've done so in Oregon, in
17 Alaska, Oklahoma, in -- in Minnesota, and there is a state
18 there that unfortunately I didn't get to testify in because
19 we were able to secure a very positive settlement before we
20 went to trial.

21 But I -- I list those proceedings and there is a
22 publicly available article summarizing my work called
23 subsidized Rule 12 (indiscernible), which as I think I've
24 mentioned has been cited by the Tenth Circuit.

25 Q Okay. So is it fair to say you have extensive

1 experience participating in regulatory matters at the
2 federal level?

3 A At the federal and at the state level I believe I can
4 make that claim.

5 MR. RUHL: At this time, Your Honor, we would like
6 to offer Mr. Chen as an expert in federal communications law
7 and regulatory policy, and specifically -- most specifically
8 as it relates to the likelihood the debtor will get
9 extraordinary relief from the FCC's obligation to uphold the
10 public interest, convenience and necessity as it relates to
11 --

12 THE COURT: Any objection or voir dire?

13 MR. GENO: No objection, Your Honor.

14 MR. LUPINACCI: We do have voir dire. Mr. Kirk
15 has some.

16 THE COURT: All right. Mr. Kirk, voir dire.

17 VOIR-DIRE EXAMINATION

18 BY MR. KIRK

19 Q Good morning, Professor Chen.

20 A Good morning.

21 Q I just have a few questions. Have you ever served at
22 the FCC?

23 A Have I excuse me?

24 Q Served at the FCC?

25 A No, I have not.

1 Q Do you know what the FCBA stands for?

2 A No.

3 Q It's the Federal Communications Bar Association. Are
4 you a member of the FCBA?

5 A No. I've been a full-time legal academic.

6 Q Okay. What is Title III of the Communications Act?

7 A That's the -- historically Title III is the wireless
8 section. It started as regular communications.

9 Q Have you ever written any scholarly articles focused on
10 Title III?

11 A On Title III, at this point Title III and Title II have
12 all but practically merged in as much as so much of what
13 historically was covered under Title II, common carriers, is
14 being conducted on media historically covered by Title III.
15 At the time of the original Communications Acts' enactment
16 the media more or less followed the uses. So as a result --
17 if you really want to push that point, I can say, no, but,
18 yes.

19 Q I'm not sure what your answer is. Have you ever
20 written articles specifically --

21 A Yes.

22 Q -- addressing Title III?

23 A Now that I think about it because it's been awhile.
24 But once upon a time I really did want to write extensively
25 about traditional broadcasts. So if you really -- in fact,

1 I've written quite a few about them now that you -- you
2 mention it because I had been so focused on issues of
3 carriers and competition among carriers I had now forgotten
4 the work. Let's see. Here you go. Conduit based
5 regulation speech follows up on (indiscernible). I've
6 written two pieces specifically on red line including the --

7 Q How does conduit-based regulation deal with wireless in
8 that article, Title III?

9 A Wireless is a conduit.

10 Q Okay. Go on.

11 A Well, with all due respect, wireless is a conduit that
12 historically has been subjected to different regulatory and
13 constitutional treatment because historically
14 (indiscernible) and ultimately before that in the National
15 Broadcasting Company case the issue was this; that whereas
16 we can build as many (indiscernible) networks as we want,
17 spectrum is a physically definite finite facility and as a
18 result there is a (indiscernible) rational which is
19 (indiscernible) --

20 Q We're getting (indiscernible). My -- my question was
21 about articles. It's not about --

22 A Yes. It -- you were contesting whether I knew anything
23 about wireless and I was simply trying to explain --

24 Q I simply asked whether --

25 A All right. The answer is yes. Thank you.

1 Q How many bureaus are at the FCC?

2 A If you want to know whether I know the day to day
3 minutia of practice before the commission, that has not been
4 the focus of my work.

5 Q Okay. So you don't know which one of the FCC's bureaus
6 would handle a Second Thursday case?

7 A Well, in this particular instance it would be
8 (indiscernible) -- excuse me -- the wireless
9 telecommunications bureau as presented to it by the
10 enforcement bureau.

11 Q You're sure?

12 A To be perfectly honest, I would not be the one to read
13 that particular thing. I am -- I have been asked to review
14 the likelihood on the basis of my reading of -- my attempt
15 to read as far as to the extent that I could every case by
16 the commission and by a review in court involving the Second
17 Thursday doctrine.

18 Q But did I just hear you testify that you wouldn't be
19 the appropriate person to testify in the minutia of Second
20 Thursday and how that works?

21 A I would be -- I would not feel as if I should be the
22 lawyer on this case. In that sense I freely admit if you
23 would like someone to take the case up as Jenner & Block
24 might, I probably would say that Mr. Fedder (ph) would be a
25 fine choice. In my instance, what I am best suited for

1 doing is to examine the best of my ability, what any lawyer
2 in any (indiscernible) we can do, which is to evaluate the
3 law of the United States as made known to its citizens.

4 MR. KIRK: Your Honor, we object to the professor
5 as being an expert on Second Thursday issues. By his own
6 admission he's not the appropriate person.

7 No further questions.

8 THE COURT: All right. Mr. Ruhl, anything further
9 in support of his qualifications as an expert?

10 MR. RUHL: Yes, Your Honor.

11 DIRECT EXAMINATION (RESUMED)

12 BY MR. RUHL:

13 Q Mr. Chen, we've reviewed in some depth your resume and
14 the background summary, and I believe you said you wouldn't
15 be the person to testify as to the procedural aspects of how
16 Second Thursday might be obtained procedurally. But can you
17 tell me more about your experience in -- in -- with federal
18 communications law, including the Communications Act and
19 regulatory matters as they may pertain to that Second
20 Thursday --

21 A Yes. Every -- look, I've had an extensive set of
22 experiences before the commission and before the various
23 public utility commissions of the United States. I was
24 focusing on (indiscernible) issues involving applications of
25 the public interest convenience and necessity standard that

1 is pervasive throughout the Federal Communications Act.

2 One reason that I have been consulted on so many
3 occasions is because that standard, not only being pervasive
4 in the communications act, it's pervasive throughout the
5 rest of the United States Code, and it often is informed by
6 what is going well beyond the specific application of a
7 doctrine as it might be applied at the level of --
8 (indiscernible) of the Federal Communications Commission.

9 So the value that I bring is the ability to
10 navigate, antitrust tax, other areas, occasionally
11 securities law, things that come up in -- and quite
12 frequently areas that are called -- they're not public
13 utility. They're all the natural gas act, natural gas
14 policy act, energy policy act, and they do relate to these
15 areas.

16 You know, I -- (indiscernible) as you pointed out
17 yesterday, there is a difference between someone who is
18 advocating on behalf of a client and someone who has been
19 asked an opinion with a basis that I do believe to be well-
20 informed, especially based on my review of a good faith
21 review to cover every case in which the Second Thursday
22 doctrine has been invoked.

23 Q You mentioned that -- that you had a sense of
24 experience in the FCC's obligation or you -- I think you
25 mentioned the public interest convenience and necessity.

1 Can you explain what you mean by that and how it relates to
2 whether the FCC will grant Second Thursday?

3 A Well, the FCC in this particular instance is acting on
4 Section 310. Section 310 and multiple subsections,
5 including the one at issue, Subsection (d), is going to
6 apply the statutory standard of making a transfer or
7 approving an application for transfer under the standard of
8 the public interest convenience and necessity.

9 Jefferson Radio which is the D.C. Circuit case
10 that provides the background rule against what this entire
11 proceeding and this entire body of related proceedings has
12 been -- well, it -- these proceedings have contested. Those
13 particular -- that -- excuse me. I -- let me just back up a
14 little bit. I'm talking about Jefferson Radio.

15 Jefferson Radio is an interpretation of Section
16 310 and it says that the commission will not or narrowly
17 entertain a petition for transfer from a licensee whose
18 basic qualifications have been called into question. Second
19 Thursday is an extraordinary exception from that general
20 rule.

21 Q Okay. And that's how you -- your experience with the
22 public interest, convenience, and necessity doctrine, that's
23 how it relates to the Second Thursday --

24 A Absolutely, because the issue is this. You can talk
25 about (indiscernible) and you can go ahead and recite the

1 quasi judicially developed specific components of the Second
2 Thursday doctrine.

3 But where it breaks down is if you do not
4 understand, but, ultimately, what the commission needs to do
5 is to uphold the public interest, convenience and necessity
6 in whether Maritime, or for that matter (indiscernible), is
7 the proposed transferee, or to the extent that it has to
8 take into account, as I believe it should, the competing
9 claims asserted by Mr. Haydens and Skytel entities whether
10 those licenses at issue in this particular proceeding should
11 revert by virtue of what the commission may ultimately
12 determine to be misconduct in the -- in Auction 61.

13 That is in that ultimate application of the public
14 interest, convenience and necessity test, and on that issue
15 what I believe I can do is inform the Court why just saying,
16 oh, the creditors are innocent. (Indiscernible) precisely I
17 don't think the creditors are innocent. But I can say why
18 that ultimate question represents the true to the standard
19 that has to be upheld here. Second Thursday cannot be
20 applied if ultimately granting relief under that special
21 doctrine violates the underlying statutory requirement, and
22 that is an application of classic federal administrative law
23 and regulatory policy.

24 Q Okay.

25 MR. RUHL: Your Honor, we renew our request to

1 offer Mr. Chen as an expert in federal communications law
2 and regulatory policy, including the FCC's obligation to
3 uphold the public interest, convenience and necessity
4 doctrine and how that relates to Second Thursday.

5 THE COURT: Any further comment from Choctow, Mr.
6 Kirk?

7 MR. KIRK: I just have a quick question for the
8 professor.

9 THE COURT: All right. I'll let you ask another
10 question.

11 FURTHER VOIR DIRE EXAMINATION

12 BY MR. KIRK:

13 Q Prior to being retained to be an expert in this case,
14 how many Second Thursday cases had you read?

15 A Second Thursday?

16 Q Correct.

17 A Yeah. I've read the case --

18 Q Prior to being retained --

19 A Prior to being retained for this --

20 Q -- in this case --

21 A -- for this case --

22 Q -- how many Second Thursday --

23 A I said I had read the original case, Second Thursday
24 and the case on reconsideration. I had read two if you want
25 to be specific about it.

1 Q So you had only read those two cases prior to being
2 retained?

3 A That is correct.

4 Q Okay.

5 MR. KIRK: We continue our objection. By the
6 witness's own admission he's not an expert on Second
7 Thursday, and prior to being obtained (sic) he hadn't read
8 all but the initial case.

9 MR. RUHL: I -- I object. He didn't admit
10 anything of the sort, Your Honor.

11 THE COURT: Wait. I'll -- I'll make the ruling.
12 I understand where you are and what your objection is. I
13 understand that this is a little bit different here. I am
14 going to overrule the objection. I'm going to allow him to
15 testify as to the federal communication commission laws and
16 regulatory policy, and insofar as Second Thursday is
17 concerned, the application of the public convenience and
18 necessity doctrine to support an application for Second
19 Thursday.

20 Now the weight that will be given to this
21 witness's testimony will certainly be considered after he's
22 had -- after he's had an opportunity to be cross-examined as
23 to what he testified about.

24 So go ahead and conduct your direct.

25 MR. RUHL: Your Honor, before I begin, I would

1 like to offer Mr. Chen's resume and background summary that
2 we had up on the screen earlier as the next Skytel exhibits.

3 THE COURT: Any objection to those?

4 MR. GENO: None, Your Honor.

5 THE COURT: Okay. They will be received in
6 evidences as Skytel Exhibits, I guess they'll be 8 and 9.

7 (Skytel Exhibit Numbers 8 and 9 were received)

8 THE COURT: All right. Go ahead.

9 DIRECT EXAMINATION (RESUMED)

10 BY MR. RUHL:

11 Q Mr. Chen, what -- what have you done to prepare -- what
12 specifically -- I'm asking what materials you've reviewed
13 and other things you have done to prepare for being here
14 today?

15 A To the very best of my ability I reviewed the -- all
16 filings made by Skytel, all filings -- well, not all -- not
17 all of the filings, but I reviewed the filings made by the
18 debtor, made -- I reviewed the filings made by Choctow. I
19 reviewed the filings made by Council Tree, Inc., which, of
20 course, has since withdrawn; reviewed a number of materials
21 that had been supplied to me by you, by your colleagues and
22 by Mr. Havens, including the voice mail message that was
23 played in court yesterday by Mr. Reardon.

24 Q Okay. Do you recognize the document I've put up on the
25 screen?

1 A Yes. This is a document that was --

2 Q It shows the materials you reviewed?

3 A Yes. That was -- that showed materials that I had
4 reviewed, prepared that in cooperation with you and your --
5 your colleagues at your law firm.

6 Q Okay. You reviewed some additional materials other
7 than what's on this list, right?

8 A Yes, I did. I -- I proceeded to do my best to harvest
9 using my own research, a stack of cases on -- regarding
10 Second Thursday.

11 Q Okay.

12 MR. RUHL: Your Honor, I have a list of materials
13 reviewed that were -- was prepared in conjunction with Mr.
14 Chen. It's not exhaustive, but it has most of the
15 information. I gave a copy to Mr. Geno. I would like to
16 just shortcut this and introduce this as the next exhibit.

17 THE COURT: Any objections?

18 MR. GENO: None, Your Honor.

19 THE COURT: It will be received as Skytel Exhibit
20 10.

21 (Skytel Exhibit Number 10 was received)

22 BY MR. RUHL:

23 Q Mr. Chen, have you been present in the courtroom for
24 the entirety of the hearing on confirmation?

25 A Yes, sir.

1 Q Okay. Have you been present and -- and heard the
2 testimony of the witnesses who have testified to date?

3 A Yes, sir, I have.

4 Q Okay. Have you developed -- have you developed in this
5 case in connection with your work in this case any opinions
6 in connection with the debtors' ability to obtain Second
7 Thursday relief in related matters, particularly as it
8 connects with the FCC's obligation to uphold the public
9 interest, convenience and necessity doctrine?

10 A Yes. I have developed some opinions.

11 Q Can you tell me what your first opinion is?

12 A My first opinion is that this plan would face
13 considerable obstacles to Second Thursday relief on the
14 basis of the FCC's own precedence, and I believe that there
15 is a high likelihood that it would fail to secure relief.

16 Q Okay. Mr. Chen, can you tell me -- I want to just
17 flush out the grounds or bases for your --

18 A Sure.

19 Q -- for that first opinion. Could you -- could you give
20 me the grounds therefore?

21 A Well, it divides into two parts and then, of course, we
22 can divide it much -- much more finely with respect to each
23 of those.

24 So I do think that we ought not to get so focused
25 on the trees of the Second Thursday doctrine as outlined as

1 a recitation in most of the cases at the expense of not just
2 missing the forest, but missing the kingdom, the power and
3 the glory; that is, the public interest, convenience and
4 necessity doctrine.

5 I would also like to flush out exactly how an
6 application of all the factors of the Second Thursday test,
7 in particular, benefit to the wrongdoer and the innocence of
8 the creditors who stand to benefit from the reorganization
9 plan if it is confirmed.

10 I also would like to offer an opinion, because I
11 have reached it, on the inherent -- what I believe to be the
12 inherently speculative nature of the debtors' plan, even if
13 the commission should, contrary to my own prediction, grant
14 Second Thursday relief.

15 I would furthermore like to distinguish the
16 commissions' Footnote 7 concern over federal law safety as
17 indicated by its discussion in the Southern California
18 Railway Authorities invitation in Footnote 7 to petition for
19 an exclusion from the show cause order, hearing designation
20 order, and explain my opinion why confirmation of the plan
21 is not necessary for the commission to be able to take into
22 account, as it should, the public interest, convenience and
23 necessity and federal rail safety in small infrastructure
24 rule generally, if it should so elect.

25 And I would also like to add that throughout my

1 testimony I will do my best to identify omissions in the
2 testimony of Mr. Keller and Mr. Fedder.

3 Q Okay. I think I've heard three opinions, plus you're
4 going to try to address some of the testimony --

5 A That is correct.

6 Q -- of Mr. Keller and Mr. Fedder. Why don't we start
7 off with opinion one, the grounds for opinion one.

8 THE COURT: Mr. Spencer.

9 MR. SPENCER: Your Honor, at this point I'm going
10 to object to him testifying as to anything related to
11 Footnote 7. He was not offered as an expert in that, didn't
12 (indiscernible) say he had ever looked at that, and now he's
13 going to give opinions about that. I think --

14 THE COURT: The objection is sustained.

15 THE WITNESS: If I may explain what -- why that
16 Footnote 7 would be --

17 THE COURT: Just a second.

18 THE WITNESS: Okay. I'm sorry, Your Honor.

19 THE COURT: The objection is sustained at this
20 point. He's not been qualified to testify about Footnote 7.
21 Very specifically, the public convenience and necessity
22 doctrine insofar as it applies to the ability invoke Second
23 Thursday is what you offered him as an expert.

24 MR. RUHL: Your Honor, for the same reasons I got
25 up at voir dire with his expertise and experience, academic

1 experience and otherwise, in federal communications law and
2 regulatory policy, we'll offer him at this time as an expert
3 in that area, too, as it relates to the public interest,
4 convenience and necessity doctrine.

5 THE COURT: Insofar as it would apply to the
6 Footnote 7 treatment to the -- that might be applicable to
7 --

8 MR. RUHL: Yes, sir.

9 THE COURT: -- Southern California --

10 MR. RUHL: That's correct, Your Honor.

11 THE COURT: -- Regional Rail?

12 MR. RUHL: That's correct, Your Honor.

13 THE COURT: Any further objection, Mr. Spencer, or
14 voir dire of the witness?

15 MR. RUHL: And quite frankly, Your Honor, I might
16 -- I'm pointing this out to the extent it matters to Mr.
17 Spencer, it's -- it -- the testimony is not going to be why
18 Footnote 7 treatment is not attainable. It's going to be,
19 you know -- anyway, I would just throw it out there.

20 THE WITNESS: Well, if you can -- let him -- I
21 mean, I'm happy to answer --

22 THE COURT: Just a second.

23 THE WITNESS: -- his questions.

24 THE COURT: Go ahead, Mr. Spencer.

25 MR. SPENCER: Thank you, Your Honor.

1 VOIR DIRE EXAMINATION

2 BY MR. SPENCER:

3 Q Professor, you're going to give an opinion on Footnote
4 7 that's in the order that the commission issued as I
5 understand it. Is that correct?

6 A Yes. I plan to do that in my -- yes.

7 Q All right. Did -- did you appear -- were you in the
8 courtroom when -- when Mr. Haydens testified, as I
9 understood him, that Footnote 7 treatment was different from
10 Second Thursday treatment? Was -- is that your
11 understanding?

12 A They are different and they are similar in a very
13 crucial respect. If you'll let me, I can explain --

14 Q My question --

15 A -- what is inherently a nuanced answer. They have
16 distinct manifestations of a common application of a public
17 interest, convenience and necessity. What Footnote 7
18 attempts to achieve is to give the commission the discretion
19 not to apply Jefferson Radio so that it can, in fact,
20 approve the -- your client's -- your client's transaction.

21 Q Have you ever given an opinion in a case involving a
22 similar footnote that was issued by the commission? Is this
23 the first time you've done this?

24 A I'm trying to think if we've ever had a situation
25 regarding a single footnote in a single order. When -- what

1 I've done is I have worked on cases involving the extension
2 of what amounts to a certificate of public convenience and
3 necessity to -- to the entire case.

4 So, I mean, I'm not -- I'm just not sure if that -
5 - that's -- there is a way I can answer that question that -
6 - that makes it -- I mean, my point is when you ask whether
7 what I know about law has any relevance to Footnote 7 of
8 that particular order, my answer to you is yes, it does,
9 because the doctrine underlying the crafting of that
10 footnote is an outgrowth of the doctrine that enables the
11 commission to craft a Second Thursday exception to its
12 general Jefferson Radio policy.

13 Q So the answer to my question is no; is that correct?

14 A Since I'm really not certain what you are asking, I
15 can't say whether your answer -- the answer to your question
16 is yes or no.

17 Q I asked you if you have ever given an opinion in a case
18 that involved a footnote similar to Footnote 7 as in this
19 case, and I think your answer to that is no?

20 A I was trying to strain to see whether in a dozen years
21 of participation in cases whether an opinion that I was
22 prepared to give ever came down specifically to a single
23 footnote in a single regulatory order.

24 Q In connection with a case that involved the Second
25 Thursday doctrine, have you ever given an opinion in a case

1 that had a footnote --

2 A Sir --

3 Q -- like this?

4 A -- I'm -- I'm trying to answer your question. I think
5 we had already established to the Court's satisfaction this
6 is the first time I have been involved in a Second Thursday
7 case, but this -- the whole point is that your footnote is
8 not an application of Second Thursday. It's an application
9 of the broader discretion of the commission to uphold and
10 enforce its statutory mandate to enforce the public
11 interest, convenience and necessity.

12 Q So the answer is no, correct?

13 A If you insist on it.

14 MR. SPENCER: We object to his testifying and
15 giving any opinions about Footnote 7. We don't think he's
16 qualified. He hasn't been tendered an expert in that, and
17 we object.

18 THE COURT: Well, he's now been tendered as an
19 expert relative to Footnote 7, this Footnote 7 scenario,
20 Footnote 7 in this particular opinion and as I understand
21 the witness has not testified in a prior situation dealing
22 with a Footnote such as this or, to my understanding, has
23 any real experience with this particular footnote in this
24 particular opinion.

25 MR. RUHL: Your Honor, I -- I would -- if I could

1 ask the question, I doubt there's been a footnote like this
2 in a Second Thursday related hearing designation order ever.
3 So the answer to the question of has he given an opinion on
4 it, probably no one has.

5 THE WITNESS: I would like to answer that question
6 because the thing is is that there has -- there has not
7 been, to my knowledge, an instance where the commission has
8 been confronted with this issue. It's a novel question of
9 law.

10 MR. KIRK: Objection, Your Honor. He's testified
11 that he's not an expert on Second Thursday and now he's
12 saying there's not been a similar footnote in another Second
13 Thursday case. I don't (indiscernible).

14 MR. RUHL: He's already been qualified as an
15 expert on Second Thursday.

16 MR. KIRK: For the purposes of public interest --

17 THE WITNESS: But you've already -- but the thing
18 is that the -- I've tried desperately to explain we're
19 trying to slice the law into such thin layers that no one
20 can possibly be an expert on anything.

21 This particular doctrine happens to be deep down
22 an expression of Section 310. If you force me to say
23 whether I know a particular expression that has never been
24 encountered before in the history of the United States Code,
25 of course I'm going to have to honestly say I haven't got

1 any prior expertise with that because no one does.

2 THE COURT: Well, then, I'm not going to allow the
3 witness to testify about whether or not the FCC -- and none
4 of us know -- is going to sustain this Footnote 7 invitation
5 and allow this license to be conveyed to Southern California
6 Railroad Authority. I mean --

7 MR. RUHL: That wasn't our -- what we were going
8 to ask him, Your Honor.

9 THE COURT: Well, I'm not sure where you're going
10 with that, but I would have thought your -- your whole
11 purpose was to say, oh, no, this is not going to happen
12 because somehow it doesn't -- the public convenience and
13 necessity doesn't apply.

14 MR. RUHL: No, sir. In fact, our view is this
15 testimony is directly relevant to this plan where there's
16 been testimony by the other parties that one of the reasons
17 this Court should confirm the plan is because there's a
18 public safety concern with the railroads in California and
19 specifically involving Southern California Regional Rail
20 Authority, and we need a confirmed plan so that it can be
21 taken in a Second Thursday application to be put before the
22 FCC.

23 Well, the testimony was going to be -- and we've
24 heard some of it already -- that the Footnote 7 is
25 completely separate from that.

1 THE COURT: I understand that.

2 MR. RUHL: Okay.

3 THE COURT: I accept that.

4 MR. RUHL: Okay.

5 THE COURT: And I'm not going to let this witness
6 testify today that Footnote 7 might not be applied by the
7 FCC because he has no prior experience in that sort of area
8 as to whether they would do this or not do that. So the
9 objection is sustained --

10 MR. RUHL: Okay.

11 THE COURT: -- for that particular feature of it.

12 MR. RUHL: Yes, sir.

13 DIRECT EXAMINATION (RESUMED)

14 BY MR. RUHL:

15 Q Sir, your two opinions -- your first opinion, Mr. Chen,
16 on the likelihood of obtaining Second Thursday based on the
17 public interest, convenience and necessity doctrine and the
18 application thereof, could you --

19 A Sure. Let me at least start by offering in how this is
20 part of the public interest, convenience and necessity. And
21 let's start with the -- with Jefferson Radio.

22 Jefferson Radio, as I've said before, is the
23 commission's standing policy of not permitting a transfer of
24 a license when a licensee's basic qualifications have come
25 into question as they have here. That is the standing. It

1 has been characterized -- it has been the opinion, as
2 expressed by other witnesses in this proceeding, in
3 particular Mr. Keller and Mr. Fedder, that Second Thursday
4 is the policy itself. No. It is an exception to the policy
5 which, in turn, is the expression of the public interest,
6 convenience and necessity doctrine, and there are other
7 policies out there, including the distressed sale policy
8 from (indiscernible) Broadcasting.

9 And this is one such -- this is one such policy
10 and I might just say one -- I -- I am not trying to evade
11 the Court or express disrespect, but I do think it is fair
12 to say that what the FCC said in Footnote 7 of its order is
13 also an exception from Jefferson Radio.

14 If I may continue --

15 THE COURT: Well, I don't have any doubt about
16 that.

17 THE WITNESS: No. I'm --

18 THE COURT: But I'm just not going to let you
19 opine that --

20 THE WITNESS: Okay.

21 THE COURT: -- that -- that what they might do.

22 THE WITNESS: No. I didn't -- I wasn't going to
23 opine on that, Your Honor. Let me -- if I may just return
24 to answering Mr. Ruhl's question.

25 The public interest, convenience and necessity

1 includes the commission's interest in making sure that all
2 licensees who have had their character and fitness brought
3 into question, presumptively in the absence of a compelling
4 countervailing (sic) interest such as public safety, perhaps,
5 or certainly as we have recognized in Second Thursday, the
6 bankruptcy related interests in securing recovery for
7 innocent creditors is a basis for the commission merely to
8 say, we want you to face the music. We want other
9 similarly-situated licensees who have had their
10 qualifications called into question because they have
11 expressed a lack of candor to come up.

12 So the possible loss of licenses is exactly what
13 the public interest, convenience and necessity typically
14 demands. It is a component of that statutory standard.

15 So licensure -- we know this much. Licensure by
16 the FCC creates mere property interest, more (indiscernible)
17 a legal expectation. That's in Section 301. That's the
18 Sandersberger's (ph) case. We know that the commission has
19 procedural freedom to enforce the public interest,
20 convenience and necessity standard. It's the domain of the
21 commission, and it's not subject to contrary judicial
22 preferences. We know that from the (Indiscernible)
23 Broadcasting case.

24 So fidelity to Jefferson Radio, I just want to
25 emphasize, has value beyond the specifics of the

1 confirmation of this plan. If the commission by upholding
2 its presumptive policy under Jefferson Radio and denying
3 Second Thursday relief, what it does is it prevents their
4 client from escaping its responsibilities under the rules of
5 the commission, and it sends a signal that other licensees
6 can hear above the noise that often confounds many
7 (indiscernible) in this business. There is deterrent value
8 in orders such as the hearing designation order styled 1164.

9 Now if I may continue, Mr. Keller and Mr. Fedder
10 have both implied that Second Thursday relief is routine.
11 The commission doesn't describe it that way. It describes
12 the Second Thursday remedy as an extraordinary remedy, as an
13 exception to its standard policy. And public interest,
14 convenience and necessity standards, whether expressed in
15 rules or in orders, are never mechanistic. They're always
16 fact-specific, and we need to look at the extraordinary fact
17 patterns.

18 And if I may, I would like to point out the fact
19 patterns in this case that make it a very unusual case.

20 Let me focus first on valuation because I know
21 there's been a lot of talk about the DePriests and conscious
22 of the fact that Ms. DePriest is here. I don't want to be
23 construed as being rude or disrespectful. So I don't really
24 want to focus on that.

25 But what I do want to focus on is what my review